

10:22AM

1  
2 **UNITED STATES DISTRICT COURT**  
3 **WESTERN DISTRICT OF NEW YORK**

4 **STEPHEN KERSHNAR,**

5 Plaintiff,

Case No. 1:23-CV-525  
(LJV)

6 vs.

September 13, 2023

7 **STEPHEN H. KOLISON, JR.,** in his  
8 individual capacity and his  
9 official capacity as the President  
of the State University of New York  
at Fredonia, and

10 **DAVID STARRETT,** in his individual  
11 capacity and official capacity as  
Executive Vice President and  
12 Provost of the State University of  
New York at Fredonia,

13 Defendants.  
14

15 **EVIDENTIARY HEARING - DAY 1**  
16 **BEFORE THE HONORABLE LAWRENCE J. VILARDO**  
**UNITED STATES DISTRICT JUDGE**

17 **APPEARANCES:**

**LIPSITZ GREEN SCIME CAMBRIA LLC**  
**BY: BARRY NELSON COVERT, ESQ.**

42 Delaware Avenue  
Suite 300

Buffalo, New York 14202  
And

20 **FOUNDATION FOR INDIVIDUAL RIGHTS & EXPRESSION**  
**BY: ADAM B. STEINBAUGH, ESQ.**

21 **KELLEY L. BREGENZER, ESQ.**

510 Walnut Street  
Suite 1250  
Philadelphia, Pennsylvania 19106

23 **BY: ROBERT CORN-REVERE, ESQ.**

**JOSHUA T. BLEISCH, ESQ.**

700 Pennsylvania Avenue SE  
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Washington, DC 20003

25 For the Plaintiff

1                   **LETITIA A. JAMES**  
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3                   **BY: ALYSSA JORDAN PANTZER, ESQ.**  
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9                   **BY: JENNIFER METZGER KIMURA, ESQ.**  
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23                  For the Defendant

24                  **PRESENT:           MEGAN COMMAROTO, Paralegal**

25                  **COURT CLERK:       JANE D. KELLOGG**

**COURT REPORTER: ANN M. SAWYER, FCRR, RPR, CRR**  
                  Robert H. Jackson Courthouse  
                  2 Niagara Square  
                  Buffalo, New York 14202  
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                  \*    \*    \*    \*    \*    \*    \*    \*

                  (Proceedings commenced at 11:12 a.m.)

                  THE CLERK: All rise. United States District Court  
for the Western District of New York is now in session, the  
Honorable Lawrence J. Vilardo presiding.

                  THE COURT: Please be seated.

11:12AM 1 THE CLERK: 23-CV-525, Kershner versus Kolison, et al.

11:12AM 2 Attorneys Barry N. Covert, Joshua T. Bleisch, Robert

11:12AM 3 Corn-Revere, and Adam Steinbaugh, appearing on behalf of the

11:12AM 4 plaintiff.

11:12AM 5 Also present is attorney Kelley Bregenzer, who's

11:13AM 6 pending admission pro hac vice.

11:13AM 7 Attorneys Jennifer Metzger Kimura, Alyssa Jordan

11:13AM 8 Pantzer, and Christopher Boyd are present on behalf of the

11:13AM 9 New York State Attorney General's Office for the defendant.

11:13AM 10 Also present is State University of New York

11:13AM 11 counsel's office attorney, Kristin Klein Wheaton.

11:13AM 12 This is the date set for an evidentiary hearing.

11:13AM 13 THE COURT: Okay. Good morning, everybody.

11:13AM 14 So, first of all, I'm granting the motion to appear

11:13AM 15 pro hac vice, so you are now admitted. I will sign this.

11:13AM 16 MS. BREGENZER: Thank you, Your Honor.

11:13AM 17 THE COURT: You're welcome.

11:14AM 18 Okay. So before we begin, I want to make sure that

11:14AM 19 we're all on the same page, and that I understand what's going

11:14AM 20 on today, and that everybody else agrees with what's my

11:14AM 21 understanding of it.

11:14AM 22 So ordinarily, because the plaintiff has the burden

11:14AM 23 of proof on this, the plaintiff would be presenting proof in

11:14AM 24 support of its request for a preliminary injunction. In this

11:14AM 25 case, the plaintiff is not going to do that because the

1 plaintiff is relying on their papers for meeting their burden  
2 of proof and, in fact, doesn't think that a hearing is  
3 necessary.

4 The defense thinks a hearing is necessary. So the  
5 defense is going to put on proof with respect to the reasons  
6 that security issues require the plaintiff's continued removal  
7 from campus; is that right?

8 MS. PANTZER: Yes, Your Honor.

9 THE COURT: And the plaintiff agrees with that, as  
10 well?

11 MR. COVERT: Yes, Your Honor.

12 THE COURT: Okay. Are we going to start with any  
13 opening statements before -- do you want to -- do you folks  
14 want contemplate making an opening statement of any sort?

15 MR. BOYD: Your Honor, we would defer to the Court.

16 I did have a few preliminaries just to go over before  
17 we got into the substance, but I'll let Your Honor address any  
18 other preliminaries you have.

19 THE COURT: It's entirely up to the lawyers how you  
20 want to -- you know, I swore to myself when I became a judge  
21 that I wouldn't interfere with lawyers handling their cases.  
22 And as much as I'd like to on a number of occasions, I've sat  
23 on my hands for that very reason. Because I remember when I  
24 was a lawyer, judges screwing up my idea of how to present a  
25 case, and I just don't want to do that. So I let the lawyers

1 make those kinds of decisions.

2 So, if you folks don't feel the need to make an  
3 opening statement, there's no reason for it.

4 Okay. You said you had some preliminaries.

5 MR. BOYD: Yes. Yes, Your Honor. So we had filed a  
6 stipulated protective order that the parties had negotiated.  
7 Our main concern was given the quickness with which we had to  
8 complete our document review and production, we wanted a  
9 privilege clawback under Federal Rule of Evidence 502(D), and  
10 you need a court order to effectuate that. So we would ask  
11 that the Court so order that stipulated protective order. And  
12 that was filed --

13 THE COURT: When was it filed?

14 MR. BOYD: Let's see. It was filed on the 9th, and  
15 it's ECF number 39.

16 THE COURT: Okay. Yeah, I don't know that I have  
17 that in front of me. Any objection to my --

18 MR. COVERT: No, Your Honor.

19 THE COURT: -- just so ordering it from the bench?

20 MR. COVERT: No.

21 THE COURT: Okay. So I will --

22 MR. COVERT: We've reviewed it, and consented.

23 THE COURT: Okay. Let me take a quick read through  
24 it just to make sure I'm comfortable with it.

25 Okay. Yeah. I don't see any problem with this, so I

1 will grant this. I'll sign it now. Okay.

2 MR. BOYD: And then, Your Honor, I had two other  
3 brief housekeeping matters.

4 So on the topic of expert disclosures, as Your Honor  
5 is aware, we had raised by letter on August 31st that we felt  
6 we needed more disclosure about what plaintiff's experts were  
7 going to be testifying about.

8 Last night, they provided us with an expert witness  
9 summary. Our primary problem with the witness list they had  
10 given us before is that there was only a four-sentence  
11 description of what experts were going to testify about.  
12 Their current summary also, for each expert, only had a  
13 four-sentence disclosure as to what the expert was going to  
14 testify about.

15 The summary was not signed by the experts, it was  
16 signed by counsel. It doesn't disclose their compensation.  
17 We've asked for that, we still haven't received it.

18 Most of what the summaries are is a list of what they  
19 relied upon, a lot of which is just our exhibit list repeated  
20 back to us.

21 I will say, to his credit, I sent an email about this  
22 last night to Mr. Steinbaugh. He provided me with an email  
23 with some substance as to what the experts were going to say.  
24 It was after midnight, before 1 a.m. But it still is not  
25 signed by the experts, it's a statement of counsel with a very

11:19AM 1 brief summary.

11:19AM 2 So we've been doing our best to try to prepare  
11:19AM 3 cross-examination for these experts, but in all fairness we've  
11:19AM 4 had no opportunity until this morning. I've been driving back  
11:19AM 5 from Albany starting at 4 in the morning, I've barely been  
11:19AM 6 able to look at them. So we really have not had time to  
11:19AM 7 prepare a cross-examination.

11:19AM 8 I'll also note on the topic of the exhibit list,  
11:19AM 9 plaintiffs have submitted a supplemental exhibit list which  
11:19AM 10 increases their exhibits from 58 to 94. Now I understand why  
11:19AM 11 they may need to add exhibits for documents that we produced  
11:19AM 12 on Monday. Understandable, they didn't have those before  
11:19AM 13 Monday.

11:19AM 14 But a number of their exhibits are documents that  
11:19AM 15 they produced, and I don't see why those weren't on their  
11:19AM 16 original exhibit list.

11:19AM 17 THE COURT: Okay. We'll deal with these issues as  
11:19AM 18 they come up. So I assume the plaintiff's experts are not  
11:19AM 19 going be testifying from the get-go at the start of this  
11:20AM 20 proceeding. And you can raise whatever issues you need to  
11:20AM 21 raise or cross -- again, you know, the technical discovery  
11:20AM 22 obligations don't apply in a hearing like this, as I  
11:20AM 23 understand it, so the expert report doesn't have to be the  
11:20AM 24 full-blown expert reports that you get for a trial. So it's  
11:20AM 25 different.

1 So, if -- if you think that your ability to  
2 cross-examine has been compromised in some way by the  
3 disclosure, and that you're unable to do that, raise it when  
4 the time comes, and request the relief that you want when the  
5 time comes.

6 MR. BOYD: Okay, Your Honor, I just didn't want to  
7 sit on my hands --

8 THE COURT: No, no --

9 MR. BOYD: -- now and be --

10 THE COURT: -- no, and I'm not --

11 MR. BOYD: -- accused of sandbagging --

12 THE COURT: -- and I'm not --

13 MR. BOYD: -- when I raise it later.

14 THE COURT: -- and I'm not in any way being critical.  
15 On the contrary, I'm glad you're teeing this up.

16 I'm just saying the way we will handle it --

17 MR. BOYD: Okay.

18 THE COURT: -- now that it is teed up is when the  
19 time comes, you make the objection and request some relief.  
20 Putting the hearing over for a few weeks while you prepare  
21 your cross-examination, or something along those lines, I get  
22 it.

23 MR. BOYD: Understood, Your Honor.

24 THE COURT: Okay?

25 MR. BOYD: We will do that. Thank you very much.



11:21AM 1 THE COURT: Okay. Anything else?

11:21AM 2 MR. BOYD: I think that's it. I guess I would just  
11:21AM 3 ask the plaintiffs, do you want openings?

11:21AM 4 MR. COVERT: I don't think so.

11:21AM 5 THE COURT: Okay. Do you have any housekeeping  
11:21AM 6 matters that we need to --

11:21AM 7 MR. CORN-REVERE: Just one point. I understand  
11:21AM 8 you've described how we're going to proceed based on the  
11:21AM 9 potential objection to experts. I just wanted the record to  
11:21AM 10 be clear that what we in fact provided with the expert witness  
11:21AM 11 summaries were the full CVs of the -- of the experts exhibit.

11:21AM 12 We also included a list of all of the materials that  
11:21AM 13 they reviewed, as well as a summary of what they expected to  
11:21AM 14 say. Of course, because of the rebuttal witnesses, they'll be  
11:21AM 15 responding to testimony that they hear in court today. It's  
11:22AM 16 not possible that we're going to list everything that they're  
11:22AM 17 going to say.

11:22AM 18 And then after Mr. Boyd's email of 10:40 p.m. last  
11:22AM 19 night, we did respond right around 1 a.m. with a more fulsome  
11:22AM 20 discussion of the topics that our experts are going to discuss  
11:22AM 21 with specific references by Bate, Bates Stamp number to the  
11:22AM 22 materials that they're going to be relying on.

11:22AM 23 So, I just want the record to be clear that we're not  
11:22AM 24 talking about just some four-sentence description that gives  
11:22AM 25 the government no idea.

1 THE COURT: Well, when the time comes, I will take a  
2 look at the disclosure that was made.

3 And, again, I sat where you guys are sitting for lots  
4 of years, a lot longer than I've been sitting in this chair.  
5 And so I understand what is expert disclosure, and what's  
6 enough and what's not enough, I think I understand it anyway,  
7 and I'll make a call if I have to. But let's cross that  
8 bridge when we come to it.

9 MR. CORN-REVERE: Thank you, Your Honor.

10 THE COURT: Okay. So you can begin.

11 MS. PANTZER: Thank you, Your Honor. The defendant  
12 will call Chief Brent Isaacson.

13 THE COURT: Okay. And let me say this before you  
14 walk out, witnesses should be excluded from the courtroom  
15 before they testify, right? Once they testify, they can stay,  
16 but they should be sequestered before they testify.

17 Yes?

18 MR. COVERT: Your Honor, we would ask that our expert  
19 witnesses be allowed to stay in the courtroom, because they  
20 are going to be rebuttal witnesses, and they need to hear what  
21 Mr. Isaacson or Mr. Holder are going to say so that they --  
22 otherwise, we can summarize for them, it may slow things down,  
23 as to their opinions.

24 THE COURT: That's true. Thoughts on that?

25 MR. BOYD: Your Honor, I -- I -- I don't have any

objection to their --

THE COURT: Okay.

MR. BOYD: -- expert witnesses --

THE COURT: Fine.

MR. BOYD: -- staying.

THE COURT: Fine. Your expert witnesses can stay.

MR. COVERT: Great. Thank you.

THE COURT: All set.

**B R E N T I S A A C S O N**, having been duly called and sworn, testified as follows:

MS. PANTZER: May I proceed, Your Honor?

THE COURT: You may.

MS. PANTZER: Thank you.

**DIRECT EXAMINATION BY MS. PANTZER:**

Q. Chief Isaacson, thank you for being here today. I want to start by talking about your background and qualifications, so can you briefly describe your educational background for the Court?

A. Sure. I hold a mechanical engineering degree from the University of Rochester. I was a Navy ROTC scholarship recipient. I went into the nuclear Navy as a commissioned officer.

I served in the Nuclear Navy for six years at a unit

1 called Naval Reactors. That's Hyman Rickover's headquarters  
2 for the Naval Nuclear Propulsion Program. I was involved in  
3 doing engineering work, research on specialty areas in  
4 reactor engineering for those years.

5 I attended a six-month, full-time engineering school at  
6 the Bettis, that's B-E-T-T-I-S, Bettis Atomic Power  
7 Laboratory in Pittsburgh. That's, at the time, was the  
8 Navy's version of a master's degree in nuclear engineering.

9 I left the Navy in 1993. I went to work for Westinghouse  
10 at their science and technology center in Pittsburgh,  
11 Pennsylvania. I did related engineering work for three  
12 years.

13 I worked for short time at the nuclear site in  
14 West Valley, New York.

15 And in the summer -- actually, the fall of 1996, I was  
16 hired as a FBI agent. I began my training as a new agent at  
17 the FBI Academy. And in January of 1997, I was assigned to  
18 the Washington, D.C. field office of the FBI. I worked on a  
19 squad of agents that focused on corruption in the federal  
20 government. That took me into a lot of public corruption  
21 investigations in the executive branch of the federal  
22 government.

23 In 1999, I transferred to the Buffalo division of the  
24 FBI. I was assigned to the Jamestown resident agency for  
25 that time.

1 During my time here in Buffalo, approximately 2004 or so,  
2 I became, in our term of art, in the FBI's term of art, a  
3 coordinator for the FBI's Behavioral Analysis Unit, that's  
4 part of a broader FBI organization called the National Center  
5 For the Analysis of Violent Crime. In that role, I was  
6 responsible, in addition to my investigative work, working  
7 with police departments around Western New York that were  
8 working on particularly heinous crimes, murders, child  
9 abductions, child sexual exploitation, those kinds of  
10 matters.

11 After the Sandy Hook shooting in 2012, the FBI was tasked  
12 by the White House and congress to see if there was a way to  
13 prevent these horrible tragedies from happening around the  
14 country. So the FBI took a lead role in assembling, really,  
15 the country's top minds in violence prevention and targeted  
16 violence, and that was all done through the Behavioral  
17 Analysis Unit.

18 I was tasked, as the Buffalo coordinator for the  
19 Behavioral Analysis Unit, to go to Quantico, meet with the  
20 BAU, and receive some extensive, I should say, intensive  
21 training in threat assessment, threat mitigation plans, how  
22 they work, why they work.

23 And then I was tasked also to go out into the community  
24 here in Western New York and teach law enforcement, teach K  
25 through 12 schools, and college administrators, college law

1 enforcement departments, how to recognize the telltale signs  
2 that somebody might be planning an act of targeted violence.  
3 This particular area really interested me from a professional  
4 standpoint.

5 I had -- I had begun a master's degree in psychology by  
6 then, and I focused my academic work at the time on reading,  
7 understanding, writing, about the research that had been done  
8 in academia and in law enforcement on this phenomenon of  
9 people of carry out acts of targeted violence.

10 I received a master's degree in 2014. That really helped  
11 me in this particular niche that I was interested in, in  
12 violence prevention. And I personally -- I redoubled my  
13 efforts in Western New York to get that message out, that  
14 these acts are preventable and research very clearly shows  
15 that.

16 The key, from the FBI's standpoint, is teaching the  
17 community how to recognize those telltale behaviors that  
18 researchers have learned that people exhibit when they are  
19 planning a violent act.

20 The idea is turning bystanders, people who just observe  
21 these activities and not do anything about them or report  
22 them, we want to turn those bystanders into upstanders,  
23 people that say, oh, I know that behavior, was taught what  
24 that behavior might mean, and give them the tools that they  
25 need to recognize those behaviors, call law enforcement, call

1 school administrators, whatever it may be.

2 It -- a good corollary to that or a good analogy to that  
3 is if you see something, say something. We all know what a  
4 suspicious thing might look like; an unattended bag in a  
5 courtroom lobby, that would quickly generate some attention.

6 The idea of -- the FBI's idea here is to educate the  
7 public as to what those -- those signs are.

8 I left the FBI in 2019. My last day in the Bureau was  
9 June 30th of 2019.

10 I had been hired to serve as the chief of the University  
11 Police at SUNY Fredonia. I began that job just a week after  
12 I left the FBI. And I was at Fredonia for four years almost  
13 to the day, I retired from Fredonia just this last June 30.

14 And during my time at Fredonia, I was really trying to  
15 leverage the training, experience, that I got at the Bureau  
16 to educate the Fredonia campus community on this subject  
17 matter, what do violent offenders look like before they  
18 behave -- before they offend, rather.

19 And I also pushed that out to a lot of my colleagues  
20 throughout the SUNY system. During the COVID days of Zoom  
21 meetings, I gave a 2-hour presentation to all of the  
22 university chiefs of police throughout the SUNY system. I  
23 spoke to all of the student conduct directors across the SUNY  
24 campuses on a Zoom meeting.

25 And I also took the show on the road, went to a few

1 campuses clear up to Plattsburgh, in January I remember once,  
2 to give that -- that message to their behavioral intervention  
3 team.

4 So I really did focus my -- my time at Fredonia sort of  
5 preaching that gospel.

6 Q. Thank you, Chief. Also, I believe in your résumé, it  
7 stated that you developed a deep understanding of how  
8 offenders behave before they commit crimes. Does that go  
9 back to your training in the BAU unit?

10 A. It does, and to the academic studies that I pursued.

11 Would you like me to summarize?

12 Q. Can you just elaborate --

13 A. Sure.

14 Q. -- on your understanding of violent actors behavior prior  
15 to committing a crime?

16 A. Sure. Researchers, and particularly the FBI which has  
17 access to police investigative files that many researchers do  
18 not have access to, after a completed attack, typically an  
19 active shooting, researchers at the BAU will do very, very  
20 in-depth retrospective examinations of the investigative  
21 findings for a particular active shooting.

22 That kind of knowledge, the knowledge that academic  
23 researchers had done, mostly particularly over the last 25  
24 years or so, has led to a consensus among people that are in  
25 the threat assessment field in law enforcement that offenders



1 progress through what we call a pathway of violence.

2 The research shows pretty clearly, very clearly, that  
3 people who are motivated to commit these kinds of horrible  
4 crimes --

5 I'm going to use the word "always," and I'll clarify that  
6 in a moment.

7 -- they always have a deeply-held fixated grievance to  
8 the target. The target might be a person, the target might  
9 be an institution.

10 When I was in the FBI, at a 2-week in-person training  
11 with the Behavioral Analysis Unit, we got to talking about  
12 were there -- have there been any cases in the FBI's research  
13 where a grievance wasn't identified? And there was only one,  
14 and that was the Las Vegas shooter.

15 Investigators were not able to put together an idea of  
16 what that grievance was. He led a very, very sterile life.  
17 A search of his home yielded no information. There were --  
18 he had a very introverted personality, and that was the only  
19 case that the BAU was aware of where a grievance wasn't  
20 identified retrospectively. Oftentimes, the offender lets  
21 that be very, very well-known.

22 So we always a grievance. And I'll use that "always"  
23 with the asterisk of the Las Vegas shooter.

24 In many offenders, they also have narcissistic  
25 personalities. And the term of art that the FBI uses is that

1 these are brittle people. They are people that are easily  
2 wounded, oftentimes they -- they can recount with precision  
3 injuries to their ego that might have happened months or  
4 years earlier, whereas most of us can get over those bumps in  
5 life. These personalities cannot do so.

6 And that sets up a psychologically painful mindset for  
7 these soon-to-be offenders. They're easily grieved. They  
8 hold on to their grievances. They nurture those grievances.  
9 They revisit them.

10 And they're very narcissistic. They have the idea that,  
11 why is this injustice happening? And why is it happening to  
12 me? Or why is it happening to a population that I should --  
13 that I'm a part of, or that I should protect? That grievance  
14 is psychologically painful.

15 And they progress then to the next stage, from grievance  
16 to what we call ideation in the pathway of violence.

17 In this phase, the soon-to-be offender gets it in his  
18 idea -- and it's typically a male -- gets it in his mind  
19 that, you know what? The solution is violence, to the  
20 psychological pain I'm feeling, to those injustices that I  
21 perceive. And they start fantasizing about carrying out an  
22 attack.

23 And what the research shows is that this fantasy is --  
24 the term that the BAU uses is cyclical compensatory fantasy.  
25 It's cyclical, it's repeating, that the person revisits this

1 idea of carrying out a violent attack to redress his  
2 grievances.

3 It's compensatory. In his actual life, he may be  
4 somebody who's not succeeding socially, or succeeding  
5 academically, or succeeding in his career. In his fantasy,  
6 he's compensating for those shortcomings in his actual  
7 real-world existence.

8 At some point, that fantasy -- and this can go on for  
9 months, and it often does -- this fantasy doesn't quite  
10 satisfy the need to escape the psychological pain they feel.

11 We actually see -- researchers see an analogy between  
12 this idea of fantasy in a violent -- soon-to-be violent  
13 offender and child-pornography offenders, where  
14 child-pornography offenders typically collect obscene  
15 material, they consume it, it's a cycle of stimulation and  
16 numbing, but at some point that doesn't satisfy their desire  
17 to have sexual contact with children, and they reach out and  
18 they commit a hands-on offense.

19 In much the same way, people who are considering a  
20 violent act and fantasizing about a violent act will say, you  
21 know what? I'm tired of fantasizing about this, I'm really  
22 gonna do it. I'm really gonna do this in the real world.  
23 And they progress to the next phase in the pathway to  
24 violence where they conduct research and planning.

25 Having made this decision, I'm gonna actually do this,

1 they start to thinking about exactly how will I do this? Who  
2 is my target? How would I approach my target? How would I  
3 be armed? How will I gain tactical advantage and tactical  
4 surprise at this?

5 And in this phase, this is typically where bystanders  
6 start to see observable behavior. This -- this could be  
7 reflected in a person of concern reviewing media about past  
8 school shootings, or past violent acts. It could be  
9 researching weaponry.

10 You know, I often said at Fredonia, if one of our  
11 sophomore cello players who last year was interested in the  
12 beauty of music and making the cello sound beautiful, and is  
13 now interested in military weapons, that's an easy way to  
14 illustrate what we're looking for here. It's a step change  
15 in behavior that is often noticed by bystanders.

16 As soon-to-be offenders conduct and complete this  
17 research and planning stage, they move into the preparation  
18 phase. And this is where the person of concern, will start  
19 assembling the gear, and perhaps institute some training,  
20 self training, to carry out an attack.

21 If an offender is -- is a novice with firearms, they  
22 might go take lessons, they might go to a gun range, they'll  
23 try to teach themselves how to be proficient with firearms.  
24 And very often, this is contextually inappropriate behavior,  
25 given where they are in life and what they're about.

1 These behaviors are even more observable to bystanders.  
2 And very often, these behaviors not -- are reported to law  
3 enforcement. Not often enough, unfortunately, and that's why  
4 these attacks are not prevented.

5 After an offender completes the preparation, they go to  
6 what we call the breach stage in the pathway of violence.  
7 And that's typically where the offender is moving toward the  
8 target, either physically or emotionally.

9 And very often we see in case studies that they'll  
10 seclude themselves. They might rent a hotel room to get  
11 their gears, guns, and their mind right for the impending  
12 attack. They're -- they'll often go off the radar and we  
13 won't know where they are.

14 In some cases, that breach phase might be a homicide at  
15 home.

16 The Sandy Hook shooting is an excellent example, where  
17 the offender, Adam Lanza, shot and killed his mother before  
18 moving on to the elementary school.

19 And finally the last stage, which is too late, is the  
20 attack stage of the pathway of violence.

21 So that's a little bit of a background, that's a little  
22 bit of a primer on what drives the offender, or at least as  
23 the research sees it.

24 Q. Your résumé also indicates that you served as an advisor  
25 to university law enforcement; is that correct?

1 A. Yes.

2 Q. And did you tell us about that?

3 A. Sure. There were several cases where, in my role as an  
4 FBI agent and as a police chief, I assist other campuses with  
5 persons of concern cases. Your Honor is aware of one case, I  
6 testified here on that matter.

7 The training that I've received is unique in law  
8 enforcement. It's extraordinarily rare. People with this  
9 kind of explicit, specific training in threat assessment,  
10 threat mitigations, they are few and far between.

11 The FBI, this is very rough numbers, I would estimate  
12 today if you -- if you put every FBI agent and analyst that  
13 has this kind of training in a room, they would number about  
14 50 to 75, spread around the country, mostly focused on the  
15 Behavioral Analysis Unit.

16 None of my colleagues and fellow police chiefs in the  
17 SUNY system have this kind of training, experience, knowledge  
18 about threat assessments.

19 Sometimes, well, I should say on a few occasions, while I  
20 was police chief, other campuses had extremely concerning  
21 persons-of-concern cases.

22 I won't get too specific, Judge, but I'll just rough out  
23 one case just to give you an idea.

24 A Western New York campus came to me with a long-time  
25 employee, not an academic employee, a staff employee, who was

1 known to have a very narcissistic personality, wrote in the  
2 third person himself about himself quite a lot. And in a  
3 matter off campus, took a shotgun to a place of business,  
4 confronted somebody. There was some violence that ensued.  
5 The campus became aware of it, and moved him to an off-campus  
6 location.

7 And there was a lot of interaction that I had with that  
8 department on how to -- how to manage that person, how to  
9 conduct threat mitigation so we could keep the campus safe,  
10 minimize additional injuries to this person's ego, and keep  
11 the campus safe in the long term.

12 That case is about three years old now. The person is  
13 doing okay. There hasn't been violence.

14 So, you know, applying this model, this business model  
15 that the FBI uses does work. So that's an example. And  
16 Your Honor's aware of the other case when I was in the FBI.  
17 There are several others, but those are just a few.

18 Q. And just so I'm clear, your specialized knowledge in the  
19 realm of threat assessments is what made you qualified to  
20 serve as an advisor to other university law enforcement  
21 groups; is that correct?

22 A. That's correct. And a way to paint or illustrate the  
23 point is I was a SWAT agent for nine years and a sniper. And  
24 I taught that to other police departments. That skill is not  
25 particularly unique in law enforcement. So I have never been

1 asked to help another police department with tactics and, you  
2 know, high stress, dangerous arrest situations.

3 Q. So can you tell the Court and tell us more about your  
4 specialized knowledge in the realm of threat assessments  
5 specifically?

6 A. I think I've rounded it out.

7 What I'd like to say, though, is the -- and make clear to  
8 the Court is the incredible effectiveness of this -- of this  
9 effort on the FBI's part. The FBI's business model is  
10 that -- let me back up.

11 Typically, a person's behavior will raise concern at a  
12 school or a business. And coworkers, fellow students,  
13 college officials, they'll become concerned about this  
14 behavior. And typically they reach out to their local law  
15 enforcement department, it might be the campus police  
16 department, it might be their local police department. And  
17 law enforcement will come in, do an investigation, try to  
18 gather as much information as possible about this person of  
19 concern.

20 In some cases, the concern is not alleviated by that  
21 analysis. This person is acting in very concerning ways,  
22 perhaps has access to weapons, is behaving in ways that  
23 resonate with other completed acts of targeted violence that  
24 we've seen.

25 In those cases, the case will be raised to the local FBI



1 field office, and an agent that's doing the role that I did  
2 as the BAU coordinator will make contact with the police  
3 department, with the college or university or business, and  
4 the FBI will try to round out the investigation and perhaps  
5 do a threat assessment and see if the local office can do  
6 some threat mitigation.

7 In some cases, that's not enough. Even the local FBI  
8 office realizes that this case is so concerning, behaviors  
9 are so concerning, that the decision is made to bring in the  
10 Behavioral Analysis Unit.

11 The BAU's model, business model is to collect as much  
12 evidence about the matter as possible. And then in a --  
13 usually in a remote setting, a Zoom meeting, or a telephone  
14 conference, assemble an ad hoc team, a multidisciplinary team  
15 that's typically comprised of law enforcement, of school  
16 counselors, of school administrators, mental health  
17 professionals locally, a wide range of disciplines. These  
18 people have an understanding of what's going on with this  
19 particular person of concern. And with the BAU, a threat  
20 assessment will be conducted, and the BAU will come up with  
21 recommendations on how to manage this threat.

22 So we have a threat assessment stage, and we have a  
23 threat mitigation stage. What can we do to keep this  
24 situation from escalating into a violent act.

25 The number of -- pardon me, the number of those kinds of

1 cases around the country, this is my estimate I don't have  
2 this data from the FBI, I think it's safe to say there's been  
3 thousands of cases that the FBI's BAU and this business model  
4 have touched across the country. And these are the, sort of,  
5 the worst, of the worst, of the worst cases. These are cases  
6 that have bubbled up through that law enforcement chain, all  
7 the way up to the BAU.

8 Not one single person that has been touched by that  
9 business model has gone on to offend. Not one.

10 So, that really gets me back to this idea of if we can  
11 teach our community, for me it was the SUNY Fredonia campus  
12 community, if we can teach the community what these behaviors  
13 look like, so we can get that whole business model started,  
14 my personal view is we would prevent many, many of these  
15 instances from happening.

16 Q. Thank you.

17 MS. PANTZER: Your Honor, we would offer Chief  
18 Isaacson as an expert in threat assessment, as well as campus  
19 law enforcement and safety.

20 MR. COVERT: Your Honor, certainly threat assessment,  
21 I'm not sure about the campus safety, but we won't object.

22 THE COURT: Okay. Without objection, he is so  
23 deemed. Go ahead.

24 MS. PANTZER: Thank you, Your Honor.

25

BY MS. PANTZER:

Q. Were you chief of police with SUNY Fredonia at the time

of the Kershner matter?

A. Yes.

Q. And how did you first become aware of the matter

involving Dr. Kershner?

A. Our police dispatcher called me and we spoke, and she

made me aware that there was a general issue. I don't recall

with precision exactly who I spoke to on those first few

minutes. I did get online and quickly found that there was

interest online about this controversy. The -- I saw that

there was a -- a tweet on Twitter that had a segment of video

showing Professor Kershner making his remarks, and then a

slew of comments from the public about those.

Am I answering your question?

Q. Yes, absolutely.

A. Okay.

Q. My next question was, after you learned about the

Dr. Kershner matter, what did you do in the immediate

aftermath?

A. I believe I called Mike Metzger, who was the

vice-president at the time that I reported to, just to make

him aware of this.

At that time, I was frankly just in an

information-gathering mode. What's going on, I don't

1 understand this, this is an extraordinarily unusual situation  
2 to deal with.

3 I did take note very early on, within the first few  
4 hours, that many -- a significant fraction of the commentary  
5 online was highly negative and intimated that a violent,  
6 violent redress would be appropriate to both Dr. Kershner and  
7 to the Fredonia administrators. How could -- how could  
8 Fredonia allow this professor to, you know, make these  
9 remarks? And how did they not know about it? That sort of  
10 tone.

11 Q. And we're going to get into the threat assessments that  
12 you drafted. But on first impression to you, what made this  
13 threat situation different than other threat situations  
14 you've encountered?

15 A. My initial impression, and it only grew with time, was  
16 that the subject matter of Professor Kershner's remarks were  
17 extraordinarily aggrieving to an enormous population, in my  
18 view.

19 This is -- the idea of adult-child sex is viewed by the  
20 public as morally wrong, criminal, highly worthy of  
21 punishment. And that the public was interpreting  
22 Dr. Kershner's remarks as normalizing or justifying,  
23 sometimes even encouraging, if you read the public commentary  
24 on it, pedophilia, sexual exploitation of children.

25 I know from my own law enforcement career in the FBI -- I

1 worked well over a hundred child pornography cases in the  
2 FBI. I know from that experience that a huge percentage of  
3 the American public was either victimized themselves as  
4 children, or they have family -- young family members who  
5 were victimized. I mean, this is -- the sexual exploitation  
6 of children is extraordinarily common.

7 So for my initial impression, and it only grew with time,  
8 was that these remarks were being interpreted by the public  
9 in a way that was extraordinarily intense in the level of  
10 grievance, the intensity of grievance. And the audience was  
11 absolutely enormous, at least in the hundreds of thousands,  
12 probably in the millions. And by -- by just a few days  
13 later, I believe it was Wednesday of that week, this  
14 controversy was airing at 9 p.m. prime time on FOX News. And  
15 the narrative was highly negative toward the professor, but  
16 it was also negative to SUNY Fredonia. And the narrative  
17 was, you know, sort of the liberal academia, they're at it  
18 again. This is -- this is what your children are being  
19 exposed to.

20 Sitting here now, and I've reflected on this quite a bit,  
21 I cannot imagine a more aggrieving idea that's conveyed to so  
22 many people across the country. So it's the intensity and  
23 the breadth of this that made it unique in my mind.  
24 Q. And just to be clear, since we've not touched upon it,  
25 did you personally have an issue with the content of the

1 speech?

2 A. No.

3 Q. Was that a concern to you?

4 A. No. I -- I have not felt it my job, and I still don't  
5 feel it my job, to judge the content.

6 My exclusive concern was, and has been from the start of  
7 this, the reaction to that content, the public's reaction to  
8 that content, and the potential that I see that it increases  
9 our risk of violence.

10 Q. Earlier, when we were talking about your experience and  
11 training, you testified that on the pathway to violence,  
12 typically people have a deeply-held fixated grievance before  
13 the pathway to violence commences; is that right?

14 A. Correct.

15 Q. This group, this particular subject, do you believe that  
16 creates a large group with that deeply-held fixated  
17 grievance?

18 A. I do. There's -- there is a population in the country  
19 that either has been sexually exploited themselves as  
20 children, or they have a close relationship to a child sexual  
21 exploitation victim. That, in and of itself, is a deeply  
22 wounding experience for most people.

23 The remarks by Dr. Kershinar, as perceived by the public,  
24 as reflected in their comments, was extremely grieving.

25 My concern is that -- now we've reversed -- we've

1 reversed this whole equation, and let me explain that.

2 This -- the idea of violence prevention comes from having  
3 a lot of people with visibility on behaviors, and our term of  
4 art we say we have an optic on the person of concern. In a  
5 closed college setting, the campus community members are  
6 observing each other's behavior all the time, and that  
7 behavior, if it's concerning, will be reported.

8 Here, in this situation, all of the people that I would  
9 be worried about as the police chief are external to the  
10 campus. And there are at least thousands of them, and I  
11 would submit there's probably hundreds of thousands of them,  
12 that are extraordinarily angry, were extraordinarily angry  
13 when they read these comments by Dr. Kershinar.

14 That's -- that's the recipe.

15 So now we have -- we have a target for those grievances,  
16 the SUNY Fredonia campus, Dr. Kershinar, and SUNY Fredonia's  
17 administrators. To my mind, based on my training and  
18 experience, that is a dangerous recipe, because now we have  
19 potentially at least one, potentially many more, people that  
20 have all the right ingredients to start toward that --  
21 starting down that pathway to violence.

22 And by the time we detect it on our campus, it would be  
23 too late, because we don't have an optic, we don't have  
24 visibility of all the behaviors that people exhibit before  
25 they -- before they attack.

1 Q. When this situation arose, did you speak with  
2 Dr. Kershmar?

3 A. I did. I spoke with him several times on the day I  
4 learned of it and the day after.

5 My first conversation with Dr. Kershmar was both of us  
6 trying to get our arms around exactly what the situation was.  
7 It was -- it was still quite new.

8 But certainly, toward the end of that first day, I  
9 believe I wrote my threat assessment February 2nd, I had -- I  
10 had gone through my analysis of what can we do to keep the  
11 campus safe in this, today, what can we do to keep the campus  
12 safe?

13 My recollection was that I learned from a colleague that  
14 Dr. Kershmar was -- his schedule would not bring him back  
15 onto campus for a day or two. That gave me a little bit of  
16 time to collect my thoughts and come up with a -- that first  
17 written threat assessment that you've all seen.

18 And I had a conversation with Dr. Kershmar that, in my  
19 view for the safety of the campus he needs to stay off campus.  
20 I said Dr. Kershmar, Dr. Kolison, pardon me. I had a  
21 conversation with the president saying that that in my view,  
22 Dr. Kershmar needed to stay off campus. The president seemed  
23 to me to be reluctant of that idea.

24 And that's why, when I put together my threat assessment,  
25 that first threat assessment, I did go into some detail about



1 this whole psychology of offenders to explain to the  
2 president and the cabinet that, you know, this was not  
3 something that was certainly taken lightly by me, that my  
4 recommendation fit the research, fit what my best  
5 recommendation would be to keep the campus safe.

6 I was trying to convince the president and the  
7 administration that this recommendation was based on the  
8 facts as I knew them and the research as I understood it.

9 Q. Okay. But in addition, in the early moments right when  
10 the situation arose, you did have a conversation with  
11 Mr. Kershinar at some point with regard to his safety; is that  
12 correct?

13 A. Yes.

14 Q. Okay.

15 A. I had, I believe, two conversations with with Professor  
16 Kershinar. You know, during that time, he told me several  
17 times he was not a pedophile.

18 I told him I -- I don't need to discuss any of that with  
19 you. You know, I'm -- I want to talk about the campus's  
20 safety and your safety. I told him I had a concern for both.

21 And I also told him to be mindful of anything that might  
22 indicate that somebody was approaching him, a bad actor was  
23 approaching him.

24 I explained to him if there was any sign of vandalism or  
25 any unexplained event that might make him believe that

1 somebody was approaching him or his home, to either call me  
2 personally, I gave him my cell phone number, or to call 911.

3 Q. Okay. I want to show you what we've pre-marked as  
4 Defendant's Exhibit 4 for identification. Do you recognize  
5 this document?

6 A. I do. This is an email from me to Dr. Kershner. It's  
7 dated February 7 at 6:09 p.m.

8 MS. PANTZER: Your Honor, we would offer Defendant's  
9 Exhibit 4 for evidence.

10 MR. COVERT: No objection.

11 THE COURT: Received without objection.

12 **(Defendant's Exhibit 4 was received in evidence.)**

13 BY MS. PANTZER:

14 Q. The email in Defendant's Exhibit 4, Chief Isaacson, what  
15 does it provide?

16 A. I'm summarizing in writing what I had told him verbally  
17 in those couple of conversations that we had a few days  
18 earlier, to be observant for any persons of the unknown who  
19 might approach him or surveil him or his home or his vehicle.

20 I -- I told him to be especially aware of possible  
21 vandalism.

22 This is -- this is one behavior that we see in these  
23 kinds of cases that offenders exhibit when they're getting  
24 close to attacking, they may approach a target and vandalize  
25 property. I told him verbally several times, and again

1 reiterated it in this email, that if he saw anything that had  
2 implications for campus safety, to please call me or email  
3 me.

4 And then, finally, if he had any emergency concerns, to  
5 call University Police, and I gave our phone number.

6 I also told him that I had spoken to my colleagues at the  
7 Chautauqua County Sheriff's Office and New York State Police  
8 explaining them -- explaining to them the situation regarding  
9 this matter, and asking them to step up patrols around  
10 Dr. Kershnar's home.

11 Q. And the first paragraph of the email, Chief Isaacson,  
12 could you just read that paragraph, two sentences?

13 A. I'm writing to advise you that University Police have  
14 received phone calls to campus offices in which the callers  
15 threaten or intimate violence to you and to members of our  
16 campus. University Police are working with law enforcement  
17 partners to learn more about these calls and assess whether  
18 they impact on the safety of you and the campus community.

19 Q. Thank you. So at the time, you were fielding certain  
20 threats, and you were working with law enforcement partners  
21 to the extent you deemed necessary to handle those --

22 A. Correct.

23 Q. -- is that correct?

24 A. Yes.

25 Q. You testified a minute ago that you spoke with President

12:08PM 1 Kolison prior to issuing your formal initial threat  
12:08PM 2 assessment recommending that Dr. Kershner be removed from  
12:08PM 3 campus for a period of time; is that correct?

12:09PM 4 A. Yes.

12:09PM 5 Q. And I believe you testified that President Kolison  
12:09PM 6 expressed some reluctance to that idea. Could you talk more  
12:09PM 7 about that?

12:09PM 8 A. Yeah. I don't remember the verbatim comments. I  
12:09PM 9 remember concluding the initial conversations and -- and  
12:09PM 10 coming to my own conclusion that I had to justify this  
12:09PM 11 recommendation to the president, that this was not something  
12:09PM 12 that he was just gonna implement without understanding my  
12:09PM 13 position better.

12:09PM 14 Q. And would that be why you drafted your initial threat  
12:09PM 15 assessment?

12:09PM 16 A. Yes.

12:09PM 17 Q. Okay. Before we get into that, I just want to ask you,  
12:09PM 18 did President Kolison also in that time period express  
12:09PM 19 concern for his safety?

12:09PM 20 A. He did, yes.

12:09PM 21 THE COURT: For whose safety?

12:09PM 22 THE WITNESS: For the president's.

12:09PM 23 MS. PANTZER: For the president's safety, Your Honor.

12:09PM 24 BY MS. PANTZER:

12:09PM 25 Q. Go on.

1 A. Pardon me, yes. The president did express concern for  
2 his own personal safety because of this matter.

3 Q. And did he make any specific requests with regard to that  
4 concern?

5 A. Yes. We had -- we had been talking about getting a panic  
6 button in his office repaired, and that just hadn't happened  
7 yet. And this matter reinvigorated conversations that I had  
8 with other colleagues to install a hardened door in the  
9 president's office. It had been just a simple unlocked door  
10 that anybody could go from outdoors right into the  
11 president's office.

12 Q. And so eventually you drafted your initial threat  
13 assessment; is that correct?

14 A. Yes.

15 MS. PANTZER: Could we pull up the February 2nd, 2022  
16 threat assessment, please?

17 BY MS. PANTZER:

18 Q. Chief Isaacson, we're showing you what's been marked as  
19 Exhibit B to Defendant's Exhibit 1 for the purposes of the  
20 preliminary injunction hearing today. Do you recognize this  
21 document?

22 A. I do. This is a memorandum that I drafted and sent to  
23 SUNY counsel, Seth Gilbertson, and our director of human  
24 resources, Maria Carroll. And it outlined my concerns and  
25 safety implications and recommendations regarding the

1 Kershner matter.

2 Q. And so you drafted this document, correct?

3 A. Yes, I did.

4 MS. PANTZER: Your Honor, we would offer the  
5 February 2nd, 2022, memo that Chief Isaacson just referenced  
6 as evidence.

7 THE COURT: Okay. So you're offering Exhibit B to --

8 MS. PANTZER: Defendant's Exhibit 1.

9 THE COURT: -- Defendant's Exhibit 1?

10 MS. PANTZER: Yes, Your Honor.

11 MR. COVERT: Your Honor, we're going to be using the  
12 entire Defendant's Exhibit 1, so if you want to move all of it  
13 in.

14 MS. PANTZER: That's fine with me, Your Honor.

15 THE COURT: Okay. So Exhibit 1 is received without  
16 objection, including Exhibit B to Exhibit 1, obviously.

17 MS. PANTZER: Thank you, Your Honor.

18 THE COURT: So Exhibit 1 and its exhibits are  
19 admitted without objection.

20 MR. COVERT: Correct.

21 THE COURT: So Exhibit 1 and all its exhibits are  
22 admitted without objection.

23 **(Defendant's Exhibit 1 was received in evidence.)**

24 MR. COVERT: Your Honor, may I have one moment? My  
25 office is here to drop off a document that they created for

12:12PM 1 me.

12:12PM 2 THE COURT: Should we take a break?

12:12PM 3 MR. COVERT: No, it's not a problem. Sorry about  
12:12PM 4 that, Your Honor.

12:12PM 5 THE COURT: So you folks know where we're going  
12:12PM 6 today, what I'm planning to do is going till about 1, then  
12:12PM 7 take a break, I don't know if you need a lunch break, if you  
12:12PM 8 need one, we'll take 45 minutes, and then come back and  
12:12PM 9 continue until 5 or thereabouts. Okay?

12:12PM 10 MS. PANTZER: Thank you, Your Honor.

12:12PM 11 THE COURT: Yep.

12:12PM 12 BY MS. PANTZER:

12:12PM 13 Q. Chief Isaacson, I believe this is the first written  
12:13PM 14 report where you recommended Dr. Kershnar's removal from  
12:13PM 15 campus; is that correct?

12:13PM 16 A. That is correct.

12:13PM 17 Q. Okay. And how did you ultimately come to this conclusion  
12:13PM 18 as documented in your February 2nd, 2022, memo?

12:13PM 19 A. I -- I had consumed as much of the social media content  
12:13PM 20 as I could. I spent several hours at a desk going through  
12:13PM 21 the public reaction, at least the online social media  
12:13PM 22 reaction to this. I reflected on it. I thought about  
12:13PM 23 possible interim, less -- less intrusive or less impactful  
12:13PM 24 mitigations to the concern that I see here, as I saw here.

12:13PM 25 I did think about whether there were steps that we could

1 take to continue Dr. Kershner's presence on campus and what  
2 that would look like. Would -- would extra patrols in or  
3 around his vicinity on campus, would that alleviate my  
4 concern?

5 I did think about the idea of online classes, again, this  
6 is sort of, well, we were just coming out of COVID at this  
7 point, so online teaching was a new paradigm at Fredonia, and  
8 my conclusion was that any steps sort of removing the  
9 professor from the campus and also telling the public that he  
10 was removed from campus, those two things were necessary in  
11 my view, to improve the threat environment for our campus.

12 For reasons I explained earlier, I was very concerned  
13 that somebody might take matters into their own hands,  
14 vigilante justice might show itself, that -- that kind of an  
15 idea, that was my concern.

16 And, so, my conclusion at the end of this very early day  
17 in this matter was we need to keep the professor off campus.

18 Q. Okay. But why was it important that Dr. Kershner was  
19 removed and that the public was aware?

20 A. His presence on campus in this threat environment, from  
21 my standpoint as the chief of police, presented a -- a real  
22 security problem.

23 University Police is a small agency. I had 12 uniformed  
24 officers. At any one time, at most, three would be on duty.  
25 And they are typically responding to calls for service from



our students and staff.

Taking one or two officers off patrol duties to provide personal protective detail for the professor would really reduce the ability of the department to protect the rest of the campus. So the idea of having him on campus was quickly discounted by me.

I thought about, what would it look like if he were off campus, but still having authorized contact with our students? How would we tamp down the narrative that had quickly developed among this population on social media that I was seeing, this concerning population, how would that tamp down the -- the effect that this was having about putting a target on the campus and putting a target on campus administrators?

So for both of those reasons, I concluded that he needed to be off campus, the public needed to be told he was off campus and, in my view, that we had -- we as a campus had to distance ourselves in some way from the professor's remarks at least as perceived by the public.

It wasn't an ideal solution, but it was, in that short time, that's -- that was my best judgment, my best professional judgment.

Q. And it's fair to say at this somewhat early time in this situation, your investigation was ongoing; is that correct?

A. Yes. And I think I should clarify what "investigation"

1 means in this context.

2 The volume of these concerning messages on social media  
3 was enormous. I have one investigator to assist in my  
4 investigation here. These remarks were concerning, but they  
5 weren't rising to the level of a criminal threat.

6 For example, making interstate threats is a federal  
7 violation. These comments would not -- would not rise to the  
8 U.S. Attorney's Office charging it, that was my personal  
9 judgment, because a specific direct threat to harm or kill  
10 Dr. Kershner or someone on campus hadn't been made.

11 These were intimidated threats. They were concerning  
12 threats in that regard.

13 So, from an investigative standpoint, I didn't have the  
14 resources, as police chief. I could not call on my FBI  
15 colleagues to knock on doors across the United States, first  
16 identify these authors of these concerning messages, and then  
17 go and knock on their door to talk to them about it.

18 And in particular, you know, I already explained that  
19 these are grievance-driven crimes. If we've already created  
20 a grievance with this situation, the last thing I wanted to  
21 do was send law enforcement officers, even if I could, to  
22 knock on the doors of people who are aggrieved and say, hey,  
23 we're from the FBI or we're from law enforcement, we want to  
24 talk to you about the comments you made about this professor  
25 back in Fredonia.

1 So, "investigation" in this context meant keeping  
2 situational awareness as best we could with our limited  
3 resources on this tidal wave of concerning messages that we  
4 were seeing.

5 Q. And in maintaining that situational awareness, you were  
6 reviewing social media posts; is that correct?

7 A. Correct.

8 MS. PANTZER: Can you pull up Exhibit 16, please?

9 THE COURT: Exhibit -- I'm sorry?

10 MS. PANTZER: Exhibit 16, Your Honor. I'm sorry  
11 about that.

12 THE COURT: That's okay, no.

13 BY MS. PANTZER:

14 Q. Chief Isaacson, I've -- I'm showing you what we've  
15 previously marked as Defendant's Exhibit 16. It's a long  
16 compilation of social media posts. Take your time.

17 And as Jenna's scrolling, I'll just ask, did you review  
18 these social media posts in conducting your investigation  
19 into this situation?

20 A. These, and many like it. I couldn't testify that I saw  
21 every last one of these at the time on February 2nd, but I  
22 saw many of them and many that are similar.

23 Q. It's fair to say that these are just exemplar of the many  
24 posts that you saw, correct?

25 A. That is correct.

1 Q. And did you utilize these posts in making your  
2 assessments?

3 A. I did. And now might be a good time to discuss this  
4 phenomenon that research shows happens quite often.

5 Q. Yes, let me -- let's discuss the phenomenon.

6 MS. PANTZER: First, Your Honor, we would offer  
7 Defendant's Exhibit 16 as evidence.

8 MR. COVERT: Your Honor, I'll leave it to the  
9 discretion of the Court in the sense that he stated that he  
10 has not -- I believe he said that he's not necessarily  
11 reviewed all these documents.

12 THE COURT: Do you know -- do you know whether you've  
13 seen all these, or is this just a cross section of documents  
14 that are like those that you saw?

15 THE WITNESS: Judge, since counsel prepared this, I  
16 have reviewed all of these. My testimony was that on  
17 February 2nd when I issued the memo, I saw many of these, I  
18 don't know if I saw every single one of these on February 2nd.

19 THE COURT: Okay. And with that understanding, I  
20 will admit it into evidence.

21 MS. PANTZER: Thank you, Your Honor.

22 **(Defendant's Exhibit 16 was received in evidence.)**

23 BY MS. PANTZER:

24 Q. Chief Isaacson, I interrupted you. I apologize.

25 Can you talk about the memo that you were preparing to

1 discuss?

2 A. Sure. The research is very clear that offenders who  
3 complete acts of targeted violence very, very often, in fact  
4 usually, do not make direct explicit threats to their  
5 targets.

6 The Secret Service, back in the '90s, did what they  
7 called the exceptional case survey, and they examined  
8 assaults on public officials. And in my view, if there were  
9 an act of targeted violence that stemmed from this case, it  
10 would be similar in many regards to an attack on a public  
11 official.

12 The Secret Service study found that not one single  
13 offender made a direct threat to -- to their victim or their  
14 intended victim.

15 In threat assessments, we use the mnemonic "howlers don't  
16 hunt, and hunters don't howl". And the idea here is that  
17 people who make explicit threats of harm to a target very  
18 rarely carry them out except in, perhaps, domestic violence  
19 incidents. But in the kind of case that we're talking about  
20 here, we don't see that.

21 If an offender were to make a direct threat to a target  
22 that would bring about a predictable response from the  
23 target, the target would avoid exposure to a potential  
24 assailant, and it would bring about a predictable law  
25 enforcement response. Certainly, we see that in, for

1 example, bomb threats. College campuses, businesses, receive  
2 bomb threats all the time. I've learned that's typically  
3 around exam time that we receive bomb threats.

4 I am not aware of a case in the United States where a  
5 bomb was phoned into a college and there was a bomb, a  
6 functional bomb found. And that makes sense, right?

7 The -- the offender making the threat is typically  
8 relieving some psychological pressure, some animus towards  
9 the target that he feels just in making the threat, and  
10 there's never an intention of carrying out a threat.

11 The more concerning phenomenon, the other side of that  
12 coin, is this idea that hunters don't howl. What we see when  
13 we look back, when researchers have looked back on completed  
14 attacks, is that the offenders have not made that direct  
15 threat to the target, it would compromise their ability to  
16 carry out an attack.

17 What we see instead, especially for younger offenders, is  
18 that they will tell third parties, they will make statements,  
19 or utterances, or social media posts, or blog posts, where  
20 they intimate that violence is imminent or appropriate or  
21 justified. We call that behavior a leakage.

22 Psychologically, researchers believe that that's because  
23 an offender is either contemplating or has decided that  
24 violence is justified, and they are either strongly  
25 considering or committed to carrying out an attack. That

1 typically is a big secret for an offender to keep. They've  
2 made a big decision to carry out one of these attacks, and  
3 this behavior leakage is really understood a way the offender  
4 is almost inadvertently betraying their intention.

5 A great example would be, you know, in a school setting,  
6 a bullied student saying, you know, wouldn't it be great to  
7 kill all those jocks. You know, it's not an explicit threat.  
8 If it were transmitted in interstate commerce, it would not  
9 draw the attention of the FBI or the U.S. Attorney's Office.

10 Wouldn't it be great to kill all those jocks.

11 Any of these examples here, this -- this meme here, I  
12 just want to shoot him. You know, that kind of language,  
13 it's not an explicit threat, but it is very similar to the  
14 kinds of utterances that we see after completed attacks have  
15 been made.

16 Q. Right. So, just to be clear, the exhibit that we're  
17 showing here, Exhibit 16, the reason why this -- these items  
18 were concerning to you is because they are evidence of  
19 behavioral leakage; is that correct?

20 A. That's right. And frankly, these -- these would be more  
21 concerning to me and my colleagues in the BAU, my former  
22 colleagues in the BAU, than they would most law enforcement  
23 officers across the country.

24 You know, I was -- I was -- more than once I was called  
25 to a K through 12 school, and they had a student that was

1 exhibiting very concerning behaviors, a thousand yard stare,  
2 potentially had access to weapons at home. And a school  
3 principal would say it's not -- it's not too bad or too  
4 serious at this point because the student has not made a  
5 threat, a direct threat.

6 You know, I would almost view that as my fault that I  
7 haven't taught this school this material yet, and they're not  
8 recognizing that just the opposite is true.

9 And in fact, when -- in threat assessments I've done with  
10 other agencies, very often with the BAU, when we see explicit  
11 threats, it brings our level of concern down, which is  
12 counterintuitive to most people.

13 Q. In addition to the online threats that we've looked at  
14 with Exhibit 16, did you additionally receive any actual  
15 on-campus threat that you can recall?

16 A. There were two instances -- well, there were phone calls  
17 that the campus received.

18 Q. Right.

19 A. And there was also one episode where a person unknown  
20 taped a piece of paper to Dr. Kershner's office on campus.

21 Q. So we'll show you what's been pre-marked Defendant's  
22 Exhibit 3 for identification. Do you recognize this  
23 document, Chief Isaacson?

24 A. Yes, I do. This is the cover page for an investigation  
25 that Police Officer Huels, H-U-E-L-S, did in response to this



1 note that was taped on the professor's door.

2 Q. And is this the report documenting the on-campus threat  
3 that you had mentioned?

4 A. Yes.

5 MS. PANTZER: Okay. We would offer what's been  
6 marked as Defendant's Exhibit 3 as evidence, Your Honor.

7 MR. COVERT: Your Honor, we don't object, but it  
8 is -- it is more than just a single-page case detail report.  
9 It has additional documents behind it, as well. But we don't  
10 object.

11 THE COURT: No objection.

12 MR. COVERT: No objection.

13 THE COURT: Okay. Exhibit 3 is admitted without  
14 objection.

15 MS. PANTZER: Thank you, Your Honor.

16 **(Defendant's Exhibit 3 was received in evidence.)**

17 MS. PANTZER: And if we could scroll down.

18 BY MS. PANTZER:

19 Q. The case detail report includes certain attachments; is  
20 that correct, Chief Isaacson?

21 A. Yes.

22 Q. And all of the way to the bottom, I believe, is the  
23 actual photograph of the threat that we were describing,  
24 we'll scroll to the bottom. Is this the sign that was taped  
25 Dr. Kershner's office door?

1 A. It is, yes, it is.

2 Q. And other than Dr. Kershner, another faculty member  
3 shared the office with him; is that correct?

4 A. That is correct.

5 Q. And he expressed concern for his safety; isn't that true?

6 A. I believe that's true. I don't have a clear recollection  
7 of exactly what --

8 Q. Well, we can scroll up to the narrative --

9 MR. COVERT: Then, Your Honor, I would ask that be  
10 stricken if he has no recollection.

11 MS. PANTZER: We can scroll up to the narrative for  
12 you.

13 THE COURT: Okay, yeah, so I'll sustain -- I'll,  
14 sustain that objection to the leading. And so the answer is  
15 stricken. You can ask the next question.

16 BY MS. PANTZER:

17 Q. Okay. Well, I think it would refresh your recollection,  
18 Chief Isaacson, if we could scroll all the way to the top and  
19 identify the person who submitted the complaint.

20 Complainant 1 is identified on page 2 of this exhibit,  
21 Brian, page 1 of the actual exhibit, but Brian Boisvert.  
22 Does that refresh your recollection, Chief?

23 A. It does, yes.

24 Q. And do you know who Brian Boisvert was?

25 A. He's an employee at SUNY Fredonia. If I saw the

1 narrative on the report, I could refresh my recollection.

2 Q. Okay. We'll scroll to the narrative.

3 A. That's it.

4 THE COURT: Okay. I apologize. I forgot that I made  
5 an appointment with two of the other judges in this building  
6 at 12:30 because I thought that's when we would break for  
7 lunch. So that's what we're going to do, and I apologize for  
8 that. So we'll break now, and we'll come back at 1:15? No?

9 MR. COVERT: I asked my office to bring sandwiches  
10 for us at 1:00.

11 MR. BOYD: I did the same thing, I asked for a pizza  
12 at 1.

13 THE COURT: Okay. So let's do 1:30?

14 MR. COVERT: Okay.

15 MS. PANTZER: Yes, Your Honor.

16 THE COURT: You guys can eat fast, right?

17 MR. COVERT: Yes.

18 MS. PANTZER: Yes.

19 MR. BOYD: Sure.

20 THE COURT: And if it's a little past 1:30, we'll  
21 start a little past 1:30. I apologize, I forgot completely  
22 about it, but I remember now, it was at 12:30 and they are  
23 waiting for me. So I will be back shortly, and we'll see you  
24 at 1:30.

25 MS. PANTZER: Thank you, Your Honor.

12:33PM 1 MR. BOYD: Thank you, Your Honor.

12:33PM 2 THE CLERK: All rise.

12:33PM 3 (Off the record at 12:33 p.m.)

01:32PM 4 (Back on the record at 1:32 p.m.)

01:32PM 5 THE CLERK: All rise.

01:32PM 6 THE COURT: Please be seated.

01:32PM 7 THE CLERK: We are back on the record for the  
01:32PM 8 continuation of an evidentiary hearing in 23-CV-525, Kershinar  
01:32PM 9 versus Kolison, et al.

01:32PM 10 All counsel and parties are present.

01:32PM 11 THE COURT: Okay. You may continue. And I remind  
01:32PM 12 the witness that he's still under oath.

01:32PM 13 THE WITNESS: Yes, Judge.

01:32PM 14 MS. PANTZER: Thank you, Your Honor.

01:32PM 15 BY MS. PANTZER:

01:32PM 16 Q. Just to wrap up that exhibit we were discussing prior to  
01:33PM 17 leaving on break, again, could you please refer to the  
01:33PM 18 narrative, Chief Isaacson? And I'll ask you again, I believe  
01:33PM 19 my last question was something to the effect of do you recall  
01:33PM 20 whether or not the faculty member, Brian Boisvert, was  
01:33PM 21 feeling unsafe as a result of this incident involving  
01:33PM 22 Dr. Kershinar?

01:33PM 23 A. Yes, I've refreshed my recollection with this report.

01:33PM 24 The faculty member was concerned, and reported that concern  
01:33PM 25 to the University Police.

Q. Your February 2nd, 2022 threat assessment indicated that you were providing the university with a, quote, cooling-down period. Do you recall stating that in your threat assessment?

A. Yes.

Q. What did you mean by that?

A. I had -- my intent was to do just that. I had no idea of the future trajectory of this matter. The issue on February 2nd was what can we do today to stabilize what I thought was an unsafe situation for the campus and for Professor Kershinar.

That cooling-down period, in my mind at that time, was not a determined length of time, it was something that would be reassessed with time.

Q. Did you have any idea how long the cooling-down period would be?

A. I suspected that it would be on the order of a few weeks, perhaps a month or two, but I didn't know. I was -- I believed it likely at the time that with Professor Kershinar's absence from campus, and especially after some messaging went out to the public from campus distancing the campus from the professor's views, I did suspect that public interest would wane with time, and it did.

Q. At some point, was it determined that Dr. Kershinar's laptop would be reviewed?

01:35PM 1 A. Yes.

01:35PM 2 Q. And why was that?

01:35PM 3 A. I mentioned earlier in my testimony that I had  
01:35PM 4 investigated many, many child pornography cases in my FBI  
01:35PM 5 career. I found that among those who sexually exploited  
01:35PM 6 children, there often is a rationale that they believe, and  
01:35PM 7 is that -- that in other cultures in, you know, centuries  
01:35PM 8 past, it was socially acceptable and permissible to -- for  
01:35PM 9 adults have sex with children. I would often use that as a  
01:35PM 10 way to encourage a child-pornography suspect to confess. And  
01:36PM 11 very, very often, it worked.

01:36PM 12 Without examining in detail the exact rationale of  
01:36PM 13 Dr. Kershner's statements and views on this matter, I saw a  
01:36PM 14 lot of similarity between his messaging and the thoughts and  
01:36PM 15 beliefs of offenders that I worked with during my FBI career.  
01:36PM 16 I became concerned that because of that, it was reasonable to  
01:36PM 17 search the computer looking for contraband images of child  
01:36PM 18 pornography.

01:36PM 19 The computer was SUNY Fredonia property. There was no  
01:36PM 20 expectation of privacy. I requested authority from my  
01:36PM 21 vice-president, and he from the president, to search the  
01:37PM 22 computer, and University Police seized it.

01:37PM 23 It was brought up to the regional computer forensic  
01:37PM 24 laboratory here in Buffalo, which is an FBI-run facility.  
01:37PM 25 And the digital contents of the computer were examined, and

1 there was not any contraband material on it.

2 Q. That was his work laptop, correct?

3 A. It was -- we secured it from his office, and I believe it  
4 was a desktop computer.

5 Q. So who made the recommendation to review the laptop, was  
6 that you?

7 A. Yes.

8 Q. And just briefly going back to the cooling-down period  
9 concept, was the intention to reevaluate going forward as to  
10 whether or not the threat persisted and whether or not the  
11 cooling-down period had been effective?

12 A. Yes. On February 2nd, it absolutely was my intention.  
13 It was -- I believed that it was an untenable situation to  
14 keep him on campus in the immediate aftermath of this  
15 explosion of interest, negative interest in the campus.

16 The cooling-down period, in my view, was gonna be of a  
17 reasonable but undetermined length. And over the course of  
18 time, I came to realize that if we were to bring him back,  
19 and the public perceived that the campus was bringing him  
20 back voluntarily, that the -- the risk to the campus would be  
21 even more than it was initially.

22 And the reason I believe that and I documented in  
23 subsequent threat assessments was that if we were to have him  
24 back, and it was perceived by the public to be voluntary, now  
25 we have a multiplying effect. Now the narrative would be

1 Fredonia knows about him, they know about this controversy,  
2 they know about his beliefs, beliefs that the public  
3 obviously held in -- with disgust. It would be a much more  
4 intense reaction, and I think the public would certainly view  
5 Dr. Kershinar with even more negative attention than it had.

6 But even more importantly from my chair, it would be that  
7 the campus would have an even bigger target on its back.

8 So we'd have all those factors about creating and  
9 amplifying a grievance, and it would be a second trip to the  
10 well here for those grievances.

11 Q. Okay. In addition to searching the laptop, at some point  
12 Dr. Kershinar's emails were reviewed; is that correct?

13 A. That is correct.

14 Q. Okay. I'm going to show you a compilation of exhibits at  
15 this time. I'd like to start with Defendant's Exhibit 15.  
16 It's quite lengthy, 61 pages. I'll give you one moment to  
17 review that.

18 MS. PANTZER: Jenna, if you want to keep scrolling  
19 slowly so Chief Isaacson can orient himself.

20 THE WITNESS: I'm familiar with these.

21 BY MS. PANTZER:

22 Q. You're familiar with these emails. And what are they?

23 A. These are emails that were received by Dr. Kershinar on  
24 his fredonia.edu account.

25 Q. And in your analysis when you were conducting your threat



1 assessments with regard to this set of circumstances, did you  
2 review these emails?

3 A. I did.

4 MS. PANTZER: Your Honor, we would offer what's been  
5 marked as Defendant's Exhibit 15 as evidence.

6 MR. CORN-REVERE: No objection.

7 THE COURT: No objection? Received without  
8 objection.

9 MS. PANTZER: Thank you, Your Honor.

10 **(Defendant's Exhibit 15 was received in evidence.)**

11 MS. PANTZER: Jenna, if you want to scroll up to  
12 approximately page 4. Sorry, go down. Stop.

13 BY MS. PANTZER:

14 Q. Could you just read the one that we've stopped on there?

15 A. The one with the timestamp of 9:54?

16 Q. Yes.

17 A. It's directed to Stephen Kershner. You disgusting pig.  
18 Not only should be you be fired, you should be in jail. In  
19 what moral world is having sex with a 12-year-old okay?

20 Q. Is this an email that would concern you on the pathway to  
21 violence, Chief Isaacson? Is this a behavioral leakage email  
22 that you were discussing with the Court earlier?

23 A. Not particularly this one. Others intimate that violence  
24 is okay or acceptable, you know, you deserve to be killed,  
25 judgment day is coming, those kinds of messages.

01:43PM 1 Q. What about this one, from Jeremy McAfee at 9:24 a.m.?

01:43PM 2 A. This is getting closer to the mark. Do you live locally  
01:43PM 3 in Fredonia or Dunkirk?

01:43PM 4 I think a better example or exemplars are in my threat  
01:43PM 5 assessment from, I believe, March. They are probably in this  
01:43PM 6 collection here.

01:43PM 7 Q. What about this one from Dylan Tracy at 9:45, could you  
01:44PM 8 read that one?

01:44PM 9 THE COURT: What page are we on.

01:44PM 10 MS. PANTZER: It's on page 10 of 61, Your Honor.

01:44PM 11 THE WITNESS: Again, I think this is more toward  
01:44PM 12 disgust. The people are conveying --

01:44PM 13 BY MS. PANTZER:

01:44PM 14 Q. Okay. What about from Scotter --

01:44PM 15 A. Yeah.

01:44PM 16 Q. -- 0123.

01:44PM 17 A. This is getting closer.

01:44PM 18 Q. Page 11?

01:44PM 19 A. Yes. Sorry to interrupt. This is getting closer to the  
01:44PM 20 mark. I hope your parents tar, feather, cut your innards  
01:44PM 21 out, and drag your body through town. I think society's  
01:44PM 22 reaction would be cheers. Nonbinary people are mentally ill.  
01:45PM 23 Sorry you were touched as a child. I hope someone, even you,  
01:45PM 24 ends your life. F off and die.

01:45PM 25 Q. And, again, how did this compilation, this mass

1 collection of written threats play into your threat  
2 assessments?

3 A. They support it. On my -- my concern, again, is with  
4 messages to the professor, to the campus, or just in the echo  
5 chamber of social media, that convey the idea that violence  
6 is a -- an acceptable, even encouraged way to redress the  
7 grievances that are created by Dr. Kershner's remarks. And  
8 we saw several of those. The memes that we saw earlier in  
9 another exhibit are good examples.

10 In the subsequent threat assessment, I would find and  
11 report on examples that are much closer to this idea of  
12 behavioral leakage.

13 Q. And we have about -- in just this exhibit, we have about  
14 60 pages of emails with several threats on each page,  
15 approximately four or five on each page. And this is just a  
16 sampling; isn't that correct?

17 A. It is. It is. And I think it's important, too, to note  
18 that these are people that devoted some time and energy to  
19 message him personally.

20 There are many cases in the literature that aggrieved  
21 people attack that have not messaged their victim in any way.

22 So all taken together, this highly aggrieving message to  
23 a mass audience, these many, many, many examples of messages  
24 in social media, some to the professor himself, some to  
25 campus, that -- that violence is an acceptable way, an

1 appropriate way, to deal with the professor. That was my  
2 concern.

3 Q. And taking, for example, the email from  
4 Scotter0123@gmail.com, and even the next one, all we have is  
5 the -- is from hzl320@protonmail.com. Are these reportable  
6 these report-type threats in your opinion?

7 A. No. No. These -- these do not meet the threshold,  
8 certainly the prosecutorial threshold of, in my experience,  
9 the U.S. Attorney's Office or the District Attorney's Office.  
10 That's a one off. Prosecutors would view this as a one off  
11 message. It would be tough to get a conviction without a  
12 direct explicit threat, something like I'm gonna find you and  
13 I'm gonna shoot you. It needs to be that explicit for  
14 prosecutors to bring charges.

15 MS. PANTZER: Can you pull up Exhibit 17 through 25  
16 at this point? We can take them one at a time.

17 BY MS. PANTZER:

18 Q. Exhibit 17, do you recognize this document Chief  
19 Isaacson?

20 A. Yes.

21 Q. What is it?

22 A. This is an email to Dr. Kershner from Mike Villano.  
23 Would you like me to read it?

24 Q. First, he -- let's make sure. What is it dated?

25 A. It is dated February 3rd, time stamped 12:27 a.m. And

1 it's titled in the just world.

2 Q. And is this one of the emails you would have reviewed in  
3 making your threat assessment?

4 A. Yes.

5 MS. PANTZER: Your Honor, we would offer what's been  
6 pre-marked as Defendant's Exhibit 17 in evidence.

7 MR. COVERT: No objection.

8 THE COURT: Received without objection.

9 MS. PANTZER: Thank you.

10 **(Defendant's Exhibit 17 was received in evidence.)**

11 BY MS. PANTZER:

12 Q. Chief Isaacson, please go ahead and read it for the  
13 Court.

14 A. Sure. The message is: Scumbag, you would be horse  
15 whipped and skinned alive in public. You're beyond revolting  
16 dirt, and do not deserve to steal other people's oxygen.  
17 Calling you an MF'er is an insult to dirt bags who have sex  
18 with their mothers. Hurry up and drop dead on your way to  
19 hell, and pray we never meet. And it's signed Karma.

20 This is an excellent example of behavioral leakage. It's  
21 a -- certainly a threatening message directed to a target.  
22 It's intimating violence. He's not saying I'm going to find  
23 you and kill you on campus, but he's certainly conveying a  
24 hostile intent.

25 And the idea that it's permissible that -- that he be

1 skinned alive in public or, you know, that if -- by this  
2 author if they were to meet in person.

3 MS. PANTZER: Exhibit 18.

4 MS. METZGER KIMURA: I don't have Exhibit 18.

5 MS. PANTZER: That's okay. Exhibit 19.

6 BY MS. PANTZER:

7 Q. Chief Isaacson, showing you what's been previously marked  
8 as Exhibit 19, do you recognize this email?

9 A. I do. It's an email to Dr. Kershner dated February 2nd  
10 at 8:07 p.m.

11 Q. Is it an email you reviewed in performing your threat  
12 assessments?

13 A. Yes.

14 MS. PANTZER: Your Honor, we would offer what's been  
15 previously marked as Exhibit 19 for evidence.

16 MR. COVERT: No objection.

17 THE COURT: Received without objection.

18 **(Defendant's Exhibit 19 was received in evidence.)**

19 MS. PANTZER: Thank you.

20 BY MS. PANTZER:

21 Q. You may read it, Chief Isaacson.

22 A. Dear Mr. Kershner, you should be hung and pissed on.

23 Your death is one small step toward the better safety of our  
24 children. It is a terrible witness to the sad state of our  
25 society that you openly state your sick and perverted views.

1 Ask Jesus Christ to heal you, or spend eternity burning.

2 Signed with the initials CB.

3 Q. Is this a concerning email?

4 A. Very much so, for the same reasons. It expresses this

5 idea that violence is an acceptable remedy to this person.

6 It's directed to the professor at his campus email address.

7 Q. At this point I'm going to do a few at a time. We'll try

8 to get a few in at this time.

9 MS. PANTZER: Exhibit 20, please, Jenna.

10 MS. METZGER KIMURA: I don't have 20, unless it's a  
11 paper.

12 MS. PANTZER: It's okay. Exhibit 21, please.

13 Well, Your Honor, just quickly, there haven't been  
14 any objections yet. Would we be able to stipulate to these?  
15 Great. So we'll do --

16 MR. COVERT: I nodded my head so you couldn't write  
17 it down. Yes, no objection.

18 THE COURT: What exhibits are we talking about?

19 MS. PANTZER: Your Honor, could we please stipulate  
20 to, even though Jenna didn't have it there, but we could grab  
21 it, but could we please stipulate to 19 -- I'm sorry, we  
22 already did 19. 20, 21, 22, 23, 24, and 25. They're all  
23 emails to plaintiff similar to the ones that we've already  
24 gone over in detail.

25 THE COURT: So 20 through 25?

01:52PM 1 MS. PANTZER: Correct.

01:53PM 2 MR. COVERT: Just give me one moment.

01:53PM 3 No objection.

01:53PM 4 THE COURT: Okay. And so they are admitted without  
01:53PM 5 objection.

01:53PM 6 MS. PANTZER: Thank you.

01:53PM 7 **(Defendant's Exhibits 20-25 were received in evidence.)**

01:53PM 8 BY MS. PANTZER:

01:53PM 9 Q. We'll just read a couple. Chief Isaacson, could you  
01:53PM 10 please read Exhibit 21 already in evidence.

01:53PM 11 A. This is here on the screen?

01:53PM 12 Q. Yes.

01:53PM 13 A. It reads: I saw your Zoom meeting. Nice to see where  
01:53PM 14 you stand. Your viewpoints on child rape are worthy of  
01:53PM 15 having your flesh peeled from your bones while you watch  
01:53PM 16 kiddie porn. You are truly a demented individual who will be  
01:53PM 17 punished by God, along with your sick F'ing loser disciples  
01:53PM 18 who think what you spew is okay. Judgment day for pedophiles  
01:53PM 19 is coming.

01:53PM 20 Q. Is it concerning?

01:53PM 21 A. It is, and for a slightly different reason.

01:53PM 22 We also see in some completed attacks, the Virginia Tech  
01:53PM 23 shooter is an excellent example of this, where some of these  
01:54PM 24 offenders see themselves as what we dub pseudo-warriors.

01:54PM 25 We see this in terrorism cases where offenders will take



1 on the grievances of others, or some just cause that they  
2 see.

3 In the -- in the Virginia Tech case, the offender there  
4 published what we call a legacy token. He got in front of a  
5 video camera and recorded himself in military garb screaming  
6 at the camera, saying that he was doing this to really  
7 justify -- or, to bring justice to all of the other people,  
8 like him, are being mistreated in society.

9 Here we have an author that is essentially fantasizing  
10 out loud about violence against the professor. This is just  
11 the kind of thinking that would be consistent with this  
12 pseudo-warrior type attacker.

13 MS. PANTZER: Okay. Exhibit 22, please, Jenna.

14 BY MS. PANTZER:

15 Q. Exhibit 23. How about this one, Chief Isaacson? Can you  
16 read this for the Court, already in evidence as Exhibit 23.

17 A. You are one sick MF'er. If I ever see you, I'm going to  
18 kill you.

19 That is certainly getting very concerning. Would it be  
20 prosecuted? No, it's conditional. And even in threat  
21 assessments, we would -- we would take that into account .  
22 Very, very concerning.

23 Q. Let's do Exhibit 25.

24 A. This one reads: You need to be put down.

25 Again, this idea that violence is an acceptable and

appropriate recourse for addressing the professor's views.

Q. And in addition to threats conveyed to Dr. Kershner, there were also emails received conveying threats to the campus community at large; is that correct?

A. That's correct.

Q. All right. I'm going to show you what's been pre-marked as Defendant's Exhibit 6.

MS. PANTZER: Barry, can we stipulate to that?

MR. COVERT: Just give me one moment.

MS. PANTZER: Numbers 6 through 13 at this point.

MR. COVERT: No objection.

THE COURT: Okay. So Exhibits 6 through 13 are admitted without objection.

MS. PANTZER: Thank you.

**(Defendant's Exhibits 6-13 were received in evidence.)**

MS. PANTZER: Is this Exhibit 6, Jenna, that we have up?

MS. METZGER KIMURA: Yes, it is.

BY MS. PANTZER:

Q. Chief Isaacson, can you read Exhibit 6 for the Court?

A. Sure. This email's dated February 3rd at 8:34 a.m., and it's titled shame.

Shame on you for keeping a professor on your staff who condones and encourages pedophilia. He has been spouting this evil for years, and yet he is still allowed to teach in

01:58PM 1 the SUNY system. Do you condone men abusing one-year-old  
01:58PM 2 babies like your Professor Kershner does? In my opinion, you  
01:58PM 3 are complicit in encouraging that sick philosophy by enabling  
01:58PM 4 him to keep his job. Shame on you. You should -- you also  
01:58PM 5 should lose your job immediately for allowing this to go on  
01:58PM 6 and doing absolutely nothing about it.

01:58PM 7 Q. So here, the email indicates complicity. Does that  
01:58PM 8 concern you?

01:58PM 9 A. It does, and I'll expand on that a bit here.

01:58PM 10 This idea of physical threats to the professor were very  
01:58PM 11 concerning to me from the get-go, and I had conversations  
01:58PM 12 with the professor about that, because I was -- I was  
01:58PM 13 sincerely concerned about him being hurt.

01:58PM 14 The idea, though, of protecting him on campus or  
01:58PM 15 assigning him a personal protective detail while he's on  
01:59PM 16 campus, while he's off campus, does little if anything to  
01:59PM 17 mitigate the harm that collateral damage would cause.

01:59PM 18 There are a lot of cases in the literature, there was a  
01:59PM 19 case just this May in Allen, Texas, where police officers  
01:59PM 20 were just a few yards -- just across a parking lot from the  
01:59PM 21 start of an active shooting where the officer is there having  
01:59PM 22 an interaction with a mother and her two children, and then  
01:59PM 23 bang, bang, bang, just across the parking lot, the officer  
01:59PM 24 hears shots fired.

01:59PM 25 Within two minutes, two and a half, three minutes at the

01:59PM 1 most, that officer had grabbed his rifle, ran across the  
01:59PM 2 parking lot, found this offender, and shot and killed him.

01:59PM 3 And in that short few minutes, during those rounds, that  
02:00PM 4 time when the offender was shooting rounds into the public,  
02:00PM 5 eight people were killed.

02:00PM 6 So the collateral damage that would likely occur if an  
02:00PM 7 armed assault occurred on our campus is completely  
02:00PM 8 unacceptable.

02:00PM 9 You know, we could put a couple police officers shoulder  
02:00PM 10 to shoulder with Dr. Kershner. Just from a tactical  
02:00PM 11 standpoint, those officers are the first target of the  
02:00PM 12 offender.

02:00PM 13 It is not hard to bring a weapon onto a campus. It is  
02:00PM 14 not hard to conceal a weapon, even a long gun on campus. An  
02:00PM 15 offender could very, very quickly produce a weapon, attack  
02:00PM 16 the professor, neutralize officers, and hurt or kill  
02:01PM 17 surrounding students and staff.

02:01PM 18 Active shootings events are extraordinarily fast. The  
02:01PM 19 average active shooting event is about 12 minutes. They're  
02:01PM 20 very, very fast.

02:01PM 21 Law enforcement rarely stops -- I shouldn't say "rarely,"  
02:01PM 22 in about a third of the cases law enforcement stops active  
02:01PM 23 shooting events. The idea protecting one person and having a  
02:01PM 24 protective bubble as that person moves through the campus  
02:01PM 25 doesn't do anything to remove my concerns about threats to

1 the campus as a whole.

2 Here we have in this email, getting back to the email, an  
3 author who is attaching to campus administrators guilt by  
4 association. And there was a strong narrative in the social  
5 media discussions that Fredonia knew about his views for  
6 years. They knew that he had a book published about  
7 adult-child sex, and they kept him on board. That was the  
8 narrative in the public.

9 And my concern, from a threat assessment standpoint, was  
10 that's having the effect of putting, you know, a target on  
11 the professor, but also a target on campus. And then that  
12 link is inseparable in my view.

13 MS. PANTZER: Let's skip ahead to Exhibit 11. All  
14 the way to the bottom, please.

15 BY MS. PANTZER:

16 Q. This email, Exhibit 11, in evidence has a subject title  
17 Steve Kershner; is that correct?

18 A. That is correct.

19 Q. And it states that -- it states that SUNY Fredonia  
20 should be theoretically fumigated; did I read that correctly?

21 A. Yes.

22 Q. Is that concerning?

23 A. Yes, it's the same tone, it's the same tenor, it's the  
24 same messages as these other examples. Attaching blame in  
25 the eyes of a member of the public on campus administrators

1 for having Dr. Kershner as a teaching professor.

2 MS. PANTZER: Okay. Can we skip to Exhibit 12.

3 BY MS. PANTZER:

4 Q. Could you read that one for us, Chief Isaacson? All the  
5 way down.

6 A. The message reads: What kind of disgusting teachers are  
7 you employing there? Absolutely disgusting, suggesting sex  
8 with a one-year-old is completely fine.

9 You people should be castrated, and that teacher should  
10 be fired immediately. He's most likely a pedophile himself.

11 Here, again, this idea that violence against the campus  
12 administrators is acceptable. That's the whole underlying  
13 concern that I have. There's a vast population out there  
14 that became aggrieved by this. The idea of violence against  
15 the professor and campus resonates with them.

16 And from my position as the chief of police, I -- I  
17 didn't have the law enforcement tools or the investigative  
18 tools to protect the campus in that environment.

19 MS. PANTZER: Barry, I want to play Exhibit 26 to 32,  
20 or at least a sampling. Will you stipulate?

21 MR. COVERT: Yes, we will.

22 MS. PANTZER: Thank you .

23 THE COURT: So Exhibits 26 through 32 are admitted  
24 without objection.

25 MR. COVERT: Correct.

02:05PM 1 THE COURT: And you may play whichever ones you want.

02:05PM 2 MS. PANTZER: Thank you, Your Honor.

02:05PM 3 **(Defendant's Exhibits 26-32 were received in evidence.)**

02:05PM 4 MS. PANTZER: Jenna, let's pull up Exhibit 27,

02:05PM 5 please.

02:05PM 6 (27 was played.)

02:05PM 7 BY MS. PANTZER:

02:06PM 8 Q. Concerning to you, Chief Isaacson?

02:06PM 9 A. Extremely concerning. That touches on all of the themes

02:06PM 10 that we've discussed today. Extremely concerning.

02:06PM 11 Q. And other than the phone number, which we've identified

02:06PM 12 in our exhibit list, and I won't state on the record, was

02:06PM 13 there any other identity information for callers who left

02:06PM 14 voicemails like that?

02:06PM 15 A. No, I did make a verbal request to an FBI colleague if we

02:06PM 16 had a phone number to see if those phone numbers appeared in

02:06PM 17 FBI databases, and the answer was no for the numbers we were

02:06PM 18 able to track down.

02:07PM 19 MS. PANTZER: Jenna, can you pull up 28, please.

02:07PM 20 (28 was played.)

02:07PM 21 BY MS. PANTZER:

02:07PM 22 Q. That last quote, Chief Isaacson, I feel like driving

02:07PM 23 there and killing him; concerning?

02:07PM 24 A. Very concerning. Not chargeable . Not something that

02:07PM 25 the U.S. Attorney's Office would pursue, because it was -- it

1 was an expression of feelings, not an expression of intent.

2 The -- these -- these are just another medium to convey  
3 the same idea, right, that there's this large population that  
4 is very, very aggrieved with the professor's comments.

5 MS. PANTZER: Exhibit 30, please.

6 (30 was played.)

7 MS. PANTZER: I want to ask you specifically about  
8 one quote that we heard in that voicemail that said, stated we  
9 need to stop institutions like you. What was the impression  
10 it left on you?

11 A. It was less concerning to me. He doesn't -- he's  
12 expressing his views about Dr. Kershner's views. In this  
13 particular case, there's not an intimation of violence being  
14 okay. But I think this certainly illustrates the disgust  
15 that was in the public, but this one isn't conveying that  
16 violence is a way to resolve that.

17 Q. You undertook a further threat assessment; is that  
18 correct --

19 A. Yes.

20 Q. -- in March of 2022?

21 A. That's correct.

22 Q. And we already have all of the threat assessments in  
23 evidence as part of Defendant's Exhibit 1, so we'll show you  
24 your March 17th, 2022 threat assessment. I believe in this  
25 threat assessment, Chief Isaacson, you acknowledged that the



02:10PM 1 interest from the public had waned.

02:10PM 2 A. Yes, I did.

02:11PM 3 Q. And could you explain your conclusion?

02:11PM 4 A. Sure. This is --

02:11PM 5 Can you scroll back up, Jenna, please?

02:11PM 6 This is about five or six weeks after the controversy  
02:11PM 7 came to light, and about -- about five weeks after it became  
02:11PM 8 known in the public that Dr. Kershnar was off campus, and  
02:11PM 9 there were. There was some public relations press messaging  
02:11PM 10 from the campus saying that campus disavowed his views and  
02:11PM 11 disagreed with them. I'm paraphrasing there.

02:11PM 12 As I suspected early on, that resulted in a -- a cooling  
02:11PM 13 down of the passions that were surrounding this issue early  
02:11PM 14 on. And by March 17th when I authored this updated  
02:12PM 15 assessment, I had time to more fully analyze and assess and  
02:12PM 16 contemplate, consider the messaging that I'd seen on social  
02:12PM 17 media, the message voicemails that we had seen, just really  
02:12PM 18 the entire situation was much better understood by me at that  
02:12PM 19 point. And it was clear to me then, and it stays clear to me  
02:12PM 20 today, but it was certainly clear to me then that bringing  
02:12PM 21 him back to campus would make matters worse than they were on  
02:12PM 22 February 2nd. And that is one of the points I make in this  
02:12PM 23 second assessment.

02:12PM 24 Q. Can you explain that further? Why would it make matters  
02:12PM 25 worse?

02:12PM 1 A. Sure. I touched on it earlier, but the narrative in my  
02:12PM 2 view -- the narrative in the public's mind would be that, can  
02:13PM 3 you believe they brought him back? They know full well  
02:13PM 4 what's going on. They can't claim ignorance anymore. They  
02:13PM 5 know he normalizes pedophilia. The campus is complicit in  
02:13PM 6 these views and supports these views. And the campus is  
02:13PM 7 giving him a platform to spread these views among our  
02:13PM 8 impressionable young people.

02:13PM 9 That underlying narrative was common in the early part of  
02:13PM 10 the controversy here. If we were to bring him back, Fredonia  
02:13PM 11 wouldn't have any credible messaging to the public to say,  
02:13PM 12 oh, we were surprised about this, right?

02:13PM 13 I think -- I think this caught everybody on our campus,  
02:13PM 14 certainly me, on February 1st and 2nd, completely by  
02:13PM 15 surprise, just the intensity and the enormity of this  
02:13PM 16 concern. Bringing him back six weeks later when I -- when I  
02:14PM 17 authored this memo, would have made the situation worse than  
02:14PM 18 it was to start.

02:14PM 19 Q. And I think we touched on this earlier, too, but I  
02:14PM 20 believe that the quote is specifically in this threat  
02:14PM 21 assessment, you state that hunters don't howl. Could you  
02:14PM 22 please explain what you mean by that?

02:14PM 23 A. Sure. I mentioned earlier this morning that this idea of  
02:14PM 24 hunters don't howl and howlers don't hunt.

02:14PM 25 Hunters, people who actually complete acts of targeted

1 violence, very, very rarely issue direct unequivocal threats  
2 to their targets. I mentioned Secret Service exceptional  
3 case study, which is still a landmark study in this field,  
4 where they examined -- I believe it was 47 attacks on public  
5 officials, completed attacks on public officials. Not one  
6 offender had issued a direct threat to their target.

7 So that's this idea of hunters don't howl. Hunters  
8 don't -- those who complete acts of targeted violence don't  
9 issue direct threats to their targets before the attack.

10 Q. So what does that mean here, where there has been an  
11 allegation that there is a lack of direct threats? How does  
12 that play into your analysis?

13 A. It's back to the idea that I mentioned earlier, that when  
14 a high school principal says it's not too serious because we  
15 haven't gotten a direct threat from the student. That is  
16 cold comfort, that is something that should never be taken as  
17 an indication that we can reduce our level of concern.

18 Just the opposite is true. Back to the idea of a bomb  
19 threat. If there is a direct threat, it's a near  
20 mathematical certainty that there's not going to be a  
21 targeted attack. We still have to examine those, we still  
22 have to treat them seriously and evaluate them. But a very  
23 good rule of thumb is people who issue direct threats,  
24 unequivocal directed threats to their targets, don't carry  
25 them out as a rule, as a rule of thumb.

02:16PM 1 Q. Is that why howlers also don't hunt?

02:16PM 2 A. That is why howlers don't hunt, that's exactly right.

02:16PM 3 Howlers, people who make direct unequivocal threats very

02:16PM 4 rarely carry them out.

02:16PM 5 Q. You also discuss in this threat assessment, Chief

02:16PM 6 Isaacson, that offenders often do not snap, they plan. Can

02:16PM 7 you talk about that?

02:16PM 8 A. Sure. It's a myth in the general public that when we

02:16PM 9 turn on our TV and we see yet another active shooting has

02:16PM 10 happened, the general public thinks, oh, that's -- some crazy

02:17PM 11 person went off the rails. This idea of waking up one

02:17PM 12 morning and saying, you know, I'm gonna go grab a gun and

02:17PM 13 kill as many people as I can. We don't see that in

02:17PM 14 retrospective examinations of these events.

02:17PM 15 What we do see is attackers plan.

02:17PM 16 Remember, this is a grievance-driven phenomenon that

02:17PM 17 brings offenders from a grievance, through ideation, through

02:17PM 18 preparation and planning, through research, and then finally

02:17PM 19 to an attack. That whole process very often takes weeks or

02:17PM 20 months, sometimes years.

02:17PM 21 There are cases in the literature where an offender had a

02:17PM 22 grievance for three years. An attacker at Case Western

02:17PM 23 University in Cleveland had a grievance against that

02:18PM 24 university for three years, and then finally offended and

02:18PM 25 shot and killed one person on campus.

02:18PM 1 Q. Just briefly, I apologize for backtracking, but I want to  
02:18PM 2 go back to the threats that we read into evidence that  
02:18PM 3 Dr. Kershinar received. Did he report those to you?

02:18PM 4 A. No, he did not.

02:18PM 5 I -- I had authority from the president and my  
02:18PM 6 vice-president to review emails that were received on  
02:18PM 7 Dr. Kershinar's fredonia.edu account. I saw a number of  
02:18PM 8 emails that were very concerning to me, that were threatening  
02:18PM 9 in nature, and they were authored by persons unknown and sent  
02:18PM 10 to the professor.

02:18PM 11 When I talked to him, I believe I made it very clear I  
02:18PM 12 was concerned about his personal safety, and I was genuinely,  
02:19PM 13 and I still am.

02:19PM 14 I asked him, I would say I pleaded with him, that if  
02:19PM 15 there was anything that came to his attention that indicated  
02:19PM 16 that he was at risk or that the campus was at risk, to call  
02:19PM 17 911, call University Police, or call me directly. And I told  
02:19PM 18 him, I gave him my phone number, I told him you can call any  
02:19PM 19 time. He did -- he never called me, he never once called me.

02:19PM 20 When I saw these concerning emails that I saw on his  
02:19PM 21 Fredonia email account, I saw that he had -- he had assembled  
02:19PM 22 them into a Word document, he had cut and pasted those  
02:19PM 23 concerning emails into a Word document, and then he emailed  
02:19PM 24 it out to a group who I believe are fellow academicians,  
02:20PM 25 people that were academia.

02:20PM 1 Q. But he didn't report them to you?

02:20PM 2 A. He did not report them to me. And that weighed heavily  
02:20PM 3 in my considerations of how -- how can we keep him safe, and  
02:20PM 4 how can we keep the campus safe, as we don't have him as a  
02:20PM 5 reliable partner in that safety picture.

02:20PM 6 You know, in protective detail duties, the armed security  
02:20PM 7 has to have very open and honest conversations with with the  
02:20PM 8 protectee, the person who's being protected. Otherwise, it  
02:20PM 9 just doesn't work. There has to be that understanding that,  
02:20PM 10 you know, the protectee is keeping the security detail  
02:21PM 11 apprised of what is going on and conveying any information  
02:21PM 12 that might indicate that there's a security risk.

02:21PM 13 After seeing what Professor Kershinar had done, he had  
02:21PM 14 these concerning emails. He collected them, sent them to his  
02:21PM 15 colleagues, and didn't send them to me.

02:21PM 16 It made me believe that I would not be able to rely on  
02:21PM 17 him as a -- as a partner in his security and in the campus's  
02:21PM 18 security if he were to be back on campus.

02:21PM 19 Q. I think in this threat assessment, you come to the  
02:21PM 20 conclusion that you feel that the only way to mitigate the  
02:21PM 21 safety risk to campus is to prevent the first step in the  
02:21PM 22 pathway to violence that you described for us earlier.

02:21PM 23 A. That's exactly right. This is a very unique case. The  
02:21PM 24 intensity of the grievances is reflected in the emails, the  
02:22PM 25 social messaging. The enormous audience, probably numbering

1 in hundreds of thousands or millions, and the complete lack  
2 of visibility on the behaviors of would-be assailants until  
3 they showed up on our campus, it really is the perfect storm  
4 of not being able to prevent violence, not -- because we  
5 wouldn't observe it until it's way too late.

6 So from my standpoint, again, thinking about that pathway  
7 to violence, let's -- let's resolve the grievance. Let's  
8 prevent the grievance from being amplified and trumpeted  
9 over, you know, the internet and traditional and social  
10 media.

11 Q. I want to ask you a little further about why there's a  
12 lack of visibility until a would-be assailant shows up on  
13 campus. Can't we just continually monitor social media, the  
14 emails? Why isn't that enough?

15 A. If we were to have him back on campus, and we were  
16 monitoring the social media traffic, I am extremely confident  
17 we would see a lot more of what we've talked about today: A  
18 lot of vitriol, a lot of anger, hostility, directed at  
19 Dr. Kershner and the campus.

20 Persons of concern who would be aggrieved to the point  
21 that they would decide that they are going to target  
22 Professor Kershner or the campus, they would be far removed  
23 physically from campus. They might be on the other side of  
24 the country. They might be loners. They might be socially  
25 disconnected. But they're angry, they have access to

02:24PM 1 weapons, and they could plan.

02:24PM 2 And we don't have an optic on those people. We,  
02:24PM 3 Fredonia, don't. We can't rely on law enforcement generally  
02:24PM 4 to report these concerning behaviors. We can't rely on the  
02:24PM 5 public to report these concerning behaviors.

02:24PM 6 I mentioned earlier that my mission at Fredonia included  
02:24PM 7 explaining what these behaviors looked like to our campus  
02:24PM 8 community. Most members of the public don't recognize these  
02:24PM 9 behaviors when they see them. They don't understand what  
02:24PM 10 they are. They're seeing something, but they don't know what  
02:24PM 11 it is, so they're not saying something. They're not  
02:24PM 12 reporting these concerning behaviors to the -- to law  
02:24PM 13 enforcement.

02:24PM 14 So now, from Fredonia's standpoint, from the police  
02:24PM 15 department's standpoint, we have this enormous external  
02:25PM 16 audience, all of whom are highly aggrieved and some of whom,  
02:25PM 17 in my judgment, are aggrieved to the point where they would  
02:25PM 18 consider violence against the professor or against the  
02:25PM 19 campus. My first indication would be when they showed up on  
02:25PM 20 campus, that would be it.

02:25PM 21 Putting -- putting barriers between an offender --  
02:25PM 22 imagine a gate around the campus or security cameras that  
02:25PM 23 were monitoring every human being on campus, facial  
02:25PM 24 recognition technology. We wouldn't have information as to  
02:25PM 25 whose face to put in there to be on the lookout for.



1 And by the time we knew somebody would be on the pathway  
2 to violence, they would be on Stage 6, the attack phase. We  
3 like to catch them in the research and planning stage where  
4 somebody's looking over their shoulder and sees them viewing  
5 videos about Columbine that are contextually inappropriate.

6 Why is a 19-year-old college student who's a music major  
7 all of a sudden interested in videos about Columbine? That's  
8 observable behavior that we can report, we can intercede  
9 early on that pathway to violence.

10 With regard to the matter before the Court, when we first  
11 took note of the pathway of violence, it would be far too  
12 late.

13 Q. And that's because the would-be assailant would probably  
14 already be on campus?

15 A. Absolutely. Yeah. It's an open campus. The Fredonia  
16 campus is 250 acres. The buildings are spread out. At any  
17 one point, there are two, at most three, police officers on  
18 duty, on patrol on the campus.

19 We would certainly -- if there were an attack on campus,  
20 we would certainly get video of the attack. We would be able  
21 to watch that attack, perhaps our dispatcher would take note  
22 of it. There are 300 cameras, but they're not all monitored  
23 simultaneously by a human being. But we would almost  
24 certainly capture video. And maybe that would be seen by a  
25 dispatcher, it would definitely be reviewed retrospectively.

02:27PM 1 We would have video of an attack because there are so many  
02:27PM 2 cameras, but those cameras do nothing to prevent violence.

02:27PM 3 They have no effect whatsoever in preventing this phenomenon  
02:27PM 4 of targeted violence.

02:27PM 5 Q. So ultimately in your March 17, 2022 assessment, did you  
02:27PM 6 find that your February 2nd, 2022 recommendation remained?

02:27PM 7 A. Could you just say that one more time?

02:28PM 8 Q. Sure. Did you determine as of your March 17th, 2022,  
02:28PM 9 that Dr. Kershner should remain off campus?

02:28PM 10 A. I did, yes.

02:28PM 11 Q. I'm going to show you your third assessment. It's  
02:28PM 12 Exhibit E to Defendant's Exhibit 1 in evidence. I'll give  
02:28PM 13 you a minute to review this one.

02:28PM 14 What were your determinations with regard to this  
02:28PM 15 assessment, Chief Isaacson?

02:28PM 16 A. They were unchanged. I had some more opportunity at this  
02:28PM 17 point to reflect on the circumstance that we were dealing  
02:29PM 18 with, with Dr. Kershner, and I began to reflect that there's  
02:29PM 19 a lot of commonalities in a potential attack against --  
02:29PM 20 pardon me -- against Dr. Kershner as we've seen in other  
02:29PM 21 completed attacks.

02:29PM 22 Attackers are often motivated by political views,  
02:29PM 23 antiabortion views. We had an attacker down in Chautauqua  
02:29PM 24 County last year that staged -- or, pardon me, that stormed  
02:29PM 25 the stage of the amphitheater at Chautauqua Institution and

02:29PM 1 stabbed and gravely wounded Salman Rushdie. Dylan Roof, who  
02:29PM 2 killed black people at a church. We had a -- we had the Tops  
02:29PM 3 shooter here locally. These are all issues where the  
02:29PM 4 offender has a grievance. These are all grievance-motivated  
02:30PM 5 attacks.

02:30PM 6 And in some cases, the offender self-radicalizes. Again,  
02:30PM 7 we see that more often in political and terrorism cases where  
02:30PM 8 people have the personality makeup that they are easily  
02:30PM 9 grieved. They will consume media on Islamic terrorism or  
02:30PM 10 white supremacy issues. So, I was rounding out my thinking  
02:30PM 11 on this issue, and I wanted to include those thoughts in my  
02:30PM 12 rationale and my explanation to my bosses as to why keeping  
02:30PM 13 Dr. Kershinar off campus was appropriate.

02:30PM 14 I also did a little -- a little more research on this  
02:30PM 15 particular idea of vigilanteism against sex offenders, or  
02:31PM 16 people who are either rightly or wrongly identified as sex  
02:31PM 17 offenders or child molesters, the idea there being that a  
02:31PM 18 common thread -- a common theme in the narratives that I was  
02:31PM 19 seeing in the social media commentary were that Dr. Kershinar  
02:31PM 20 was a pedophile.

02:31PM 21 My concern was and my interest was what research is out  
02:31PM 22 there that perhaps looked into this idea. And there was a  
02:31PM 23 study done in 2019, just a few years ago, which is very  
02:31PM 24 recent as far as scientific research is concerned, where the  
02:31PM 25 researchers looked at 279 instances of violence against sex

02:31PM 1 offenders. And we have the sexual -- sex offender  
02:31PM 2 registration laws in all of the states now based on federal  
02:32PM 3 legislation. There are a lot of examples in this study where  
02:32PM 4 people who were either known or suspected to be child sex  
02:32PM 5 offenders, they were targeted violently, many murdered. And  
02:32PM 6 the researchers commented that this number of 279 was likely  
02:32PM 7 a vast undercount in their study that across the country  
02:32PM 8 there were likely very many, many more.

02:32PM 9 It added weight to my concern that this could be viewed  
02:32PM 10 and, I think, is viewed by many as a -- an aggrieving  
02:32PM 11 political issue where a -- and this is the narrative, this is  
02:33PM 12 not what I believe, but what I think the public believes --  
02:33PM 13 we have a pedophile at a liberal arts college that has very  
02:33PM 14 liberal, anti-American ideas, that it turns it into a  
02:33PM 15 hotly -- it turns it into a very aggrieving political issue  
02:33PM 16 in the minds of some. That is my concern.

02:33PM 17 Q. So, and I think we touched on this, but again, because  
02:33PM 18 the subject of this situation was pedophilia, questioning the  
02:33PM 19 immorality of pedophilia, did that play into your analysis  
02:33PM 20 here?

02:33PM 21 A. Yes. The ideas that Dr. Kershner raised, it certainly is  
02:33PM 22 perceived by the public, were that there's -- there's nothing  
02:33PM 23 wrong with pedophilia. There's nothing morally wrong with  
02:34PM 24 that.

02:34PM 25 To my ear, that is a brand new issue to be presented to

the American public at large by traditional and social media. It's -- it's -- it's not issues that the country has perhaps wrestled with for a hundred years or more. This is a new, hot button, shocking idea to many people.

And, you know, I'm not judging what the message is, I'm judging what the reaction is. And that's driving my concern that this issue is so inflaming to so many people, it's not something that we as a country have had a chance to digest and get our heads around.

Q. So, does that concept set apart this threat assessment from other threat assessments?

A. Yes. And in my view, the reaction to this, and the violent rhetoric and the violent ideations that this has created, is exceptional and unique to this issue.

Q. How many full-time officers does the SUNY Fredonia police department have?

A. It floats between eleven and twelve.

Q. What about part time?

A. None.

Q. So you state in this threat assessment that there are few tools to prevent attacks. What do you mean by that?

A. Few tools prevent this sort of attack. This attack would originate from off campus and come onto campus. We don't have visibility -- we don't have that optic on those behaviors on persons of concern before they offend.

1 We don't have the guards, gates, and guns that we would  
2 need to harden a target in this particular scenario to the  
3 extent that you'd need to -- to keep everybody safe. And if  
4 we were to do so, it would not look like a SUNY campus, it  
5 would look like an armed encampment.

6 We would -- in my view, we would have to at least double  
7 the complement of the number of police officers on the campus  
8 just to provide a protective detail for Dr. Kershner, and I  
9 don't think that's an effective tool to keep the campus at  
10 large safe. Frankly, it would just start the gunfight a  
11 little bit earlier if an armed intruder were to come on  
12 campus that. It does nothing to reduce the potential for  
13 collateral damage.

14 And let me contrast that with the tools we have for  
15 concerns that arise within campus. The research shows that  
16 for campus active shootings events, about 80 percent of them  
17 are caused or are carried out by people who are either  
18 current or former students or current or former employees.  
19 And about 10 percent are caused or carried out by people who  
20 have some connection to the campus, perhaps the offender's  
21 girlfriend works at campus as an example.

22 There's 10 percent of the attacks on campuses across the  
23 United States where the offender has no connection to the  
24 campus, it's just a soft target.

25 So from a violence prevention standpoint, where do we

1 have good tools? We have really good tools for dealing with  
2 threats that originate on the campus, with students, with  
3 employees, threats that originate on the campus. And that  
4 goes back to this idea that on the campus we're together all  
5 the time. Roommates are hanging out together. Teachers are  
6 having interactions with students. Cleaning staff is getting  
7 in dormitory rooms.

8 There's a lot of observation, mutual observation. We're  
9 not spying on each other, but we're aware of each other.  
10 We're aware of each other's behaviors. And especially on an  
11 educated campus like I hope to make Fredonia, people take  
12 note of concerning behaviors, and they report them.

13 On our campus at SUNY Fredonia, we -- we're very  
14 proactive in teaching the campus what to look for, how to get  
15 word to the right people on campus. We have a students of  
16 concern team, a multidisciplinary team that's very, very  
17 similar to this Behavioral Analysis Unit model that the FBI  
18 uses. An interdisciplinary team that -- or, multi-  
19 interdisciplinary team that focuses on individual students  
20 who come to its attention.

21 I sit on that -- or, I sat on that team. I would review  
22 every single case for any indications of pre-attack  
23 indicators, any pending violence. And the team on Fredonia's  
24 campus and all of the behavioral intervention teams around  
25 the United States are extraordinarily effective in

1 identifying threatening concerns -- threatening behaviors,  
2 concerning behaviors early in that pathway of violence in  
3 designing early -- in helping interventions for students.

4 If we didn't have that capability, the active shooting  
5 numbers that we see in the country would be vastly greater,  
6 in my view.

7 Campuses are catching these early, because they have  
8 visibility on that population. We don't have visibility on  
9 the concerning population with this matter.

10 Q. Why can't we just put up more cameras?

11 A. For the same reason. The Fredonia campus has 3,000  
12 cameras. That's a lot of cameras. But it's the density of  
13 those cameras --

14 If I said 3,000, I misspoke. We have 300 cameras.

15 That density of cameras is much less than you'd see in a  
16 Las Vegas casino, for example. Many of the cameras are  
17 looking out over fields or bigger areas. We're not making  
18 out individual faces. We're seeing human figures walk across  
19 the screen, not identifying people by sight. Some cameras,  
20 we do have much better resolution and much better clarity.

21 But again, those are used most often for doing retrospective  
22 investigations. A bicycle gets stolen --

23 During my tenure, there was a couple of sexual assaults  
24 on campus. The cameras were used to good effect to solve  
25 those crimes.



02:41PM 1 They are rarely used, certainly in my experience, they  
02:41PM 2 are to take notice of a person who is known by authorities as  
02:41PM 3 somebody who should not be on campus.

02:41PM 4 Q. Do cameras prevent attacks like the ones that you were  
02:41PM 5 worried about here?

02:41PM 6 A. Not at all. And that's -- that's why you can go online,  
02:41PM 7 you can go on YouTube and type in active shooters, and you'll  
02:41PM 8 get a lot of video of active shootings. And that's because  
02:41PM 9 there are a lot of cameras out there that are capturing these  
02:41PM 10 horrible crimes, clearly they're not preventing them.  
02:41PM 11 They're recording them, but they're not prevent them.

02:42PM 12 Q. What if the cameras have facial recognition technology?

02:42PM 13 I think you touched on it briefly, but just again --

02:42PM 14 A. Sure. My concern there is -- that technology is actually  
02:42PM 15 quite impressive if you know who you're looking for. If  
02:42PM 16 you -- if you were to get a driver's license photograph of a  
02:42PM 17 person that you knew should not be on the campus, you could  
02:42PM 18 enter that into the system, and it would sound an alert when  
02:42PM 19 that person came on campus.

02:42PM 20 With this matter before the Court, we don't know who to  
02:42PM 21 put into that system to recognize.

02:42PM 22 Q. Can facial recognition cameras detect guns?

02:42PM 23 A. Sometimes, yes, if they're visible.

02:42PM 24 Concealing a weapon is very, very easy. I did it for 27  
02:42PM 25 years of my plain clothes law enforcement career. It's very

02:42PM 1 easy to conceal a firearm.

02:43PM 2 FBI agents and marshals are walking around this building  
02:43PM 3 all the time armed, and you can't see the firearm.

02:43PM 4 Q. Why not add armed guards?

02:43PM 5 A. Well, state law makes it illegal for anybody other than  
02:43PM 6 authorized university police officers to carry firearms on a  
02:43PM 7 SUNY campus.

02:43PM 8 If we were to have a personal protective detail on  
02:43PM 9 Professor Kershnar, that would -- that would take away from  
02:43PM 10 the normal patrol functions of our officers.

02:43PM 11 Our officers are responding all the time to students who  
02:43PM 12 are having suicidal ideations, who are in mental health  
02:43PM 13 crises, who are having medical emergencies. To pull them  
02:43PM 14 away from those duties, sort of the bread-and-butter duties  
02:44PM 15 of a police officer on today's campuses, would put all those  
02:44PM 16 students at risk for all the other hazards that are out  
02:44PM 17 there.

02:44PM 18 Q. And if Dr. Kershnar was afforded armed guards, would that  
02:44PM 19 protect the campus from the threat that you're concerned  
02:44PM 20 about?

02:44PM 21 A. No. And I'm not particularly convinced it would provide  
02:44PM 22 Dr. Kershnar with a whole lot of real security against the  
02:44PM 23 kind of attacker that I'm worried about. You know, in this  
02:44PM 24 context, he's a public official. There have been  
02:44PM 25 assassination attempts against presidents, and they have a

1 Secret Service complement around them.

2 In the case of armed security following an individual  
3 around a campus, there's probably a reasonable improvement in  
4 the safety of that one individual. I'm not convinced that  
5 that would keep an offender who was angry at the campus at  
6 large or was looking for Kershner and just didn't know where  
7 he was, having armed guards on one person doesn't do much,  
8 doesn't do anything to protect the rest of the campus.

9 Q. And you told us earlier that there's 11 to 12 officers  
10 employed by SUNY Fredonia any time. How many officers are on  
11 the day shift when Dr. Kershner would be teaching?

12 A. Two or three.

13 Q. What about access control, having all of the doors locked  
14 with only key fob access?

15 A. Campuses -- college campuses are much different than K  
16 through 12 schools. From -- strictly from a physical  
17 security standpoint, this would be a different story if it  
18 were a K through 12 school. Where the students come in for  
19 the day, there's hard barriers and locked doors to keep  
20 intruders from coming into a K through 12 school.

21 College campuses are open. The student union is open.  
22 The academic halls are open. It's -- it's -- it's very  
23 difficult, in fact it's not done, to do sort of lock-down,  
24 lock-out drills on college campuses that you can do in K  
25 through 12 schools. It's just a different physical layout.

1 Locking the doors doesn't keep the people out of doors safe.  
2 Locking the doors doesn't keep the people in a building safe  
3 if the offender is in there with them.

4 The Virginia Tech shooter locked the doors himself with  
5 chains, locked the crash bars of the exit doors with chains  
6 before he proceeded to fire on students inside that building.

7 Q. Is it culturally important to SUNY Fredonia to remain an  
8 open campus?

9 A. Certainly. The -- on college campuses across the  
10 country, it's important that they are open, that students can  
11 move about freely, that everybody can move about freely. And  
12 certainly from a community policing standpoint, it's -- it  
13 would be a very difficult job to police any campus in this  
14 country if it was a very heavy police presence. It would  
15 have a very different character day to day. It would be  
16 frightening to a lot of our students.

17 We have a lot of students who come to us from parts of  
18 the country where there are not good relationships between  
19 communities and their police departments.

20 During my tenure, I went to great lengths to come up with  
21 events where we could break down those barriers, and police  
22 officers could interact with students in a positive way  
23 instead of a negative way.

24 Q. Okay. I want to show you your fourth threat assessment,  
25 it's Defendant's Exhibit F to Exhibit 1 in evidence. Do you

1 recognize this assessment?

2 A. Yes, I do.

3 Q. And what were your determinations?

4 A. Can you keep scrolling down, Jenna, please?

5 Yes. At this point, I had the benefit of reviewing an

6 intelligence product by a company called AlC. They're a

7 company based in Washington, D.C. I know one of the

8 principals, he's a former FBI colleague, and we hadn't spoken

9 in years. And he explained to me the kind of business AlC

10 is, and that got me thinking that perhaps they could do an

11 internet scrub in a way that perhaps I wasn't able to do.

12 I'm not trained in scrubbing the corners of the internet for

13 relevant content.

14 I asked them to do that. They got back to me with some

15 examples of concerning material they found on the internet,

16 and they shared that with me.

17 Those -- those findings supported and amplified my

18 concerns from earlier, that there were people out there that

19 were very angry with Kershnar, Dr. Kershnar, pardon me.

20 There was one example where his physical address on campus

21 was posted to an area on the -- on the dark web that is

22 frequented by highly anti-Semetic persons. They were talking

23 in angry ways about the professor and his views.

24 Q. And the -- what was your ultimate recommendation

25 following your completion of this threat assessment?

02:51PM 1 A. That we maintain the status quo. That this cooling-down  
02:51PM 2 period is continuing. I do believe that the public has  
02:51PM 3 largely lost interest in this. The public understands that  
02:51PM 4 he's not on campus, that campus has disavowed his views as  
02:51PM 5 not reflective of Fredonia. And my -- my view, as expressed  
02:51PM 6 here, was that we should maintain that going forward.

02:51PM 7 Q. Well, if the public has lost interest, Chief Isaacson,  
02:51PM 8 why can't Dr. Kershner be returned to campus?

02:51PM 9 A. For the reason I stated earlier. I am convinced that  
02:51PM 10 there would be a very intense, and I would submit a more  
02:51PM 11 intense, reaction by the public if after this time has gone  
02:52PM 12 by he were brought back and the public perceived that as  
02:52PM 13 voluntary on SUNY Fredonia's part.

02:52PM 14 If we were to just simply say let's give it a try, let's  
02:52PM 15 bring the professor back, and let's see what happens. I'm  
02:52PM 16 convinced, and I think any reasonable person would conclude,  
02:52PM 17 that the reaction would be more intense, the concerns for  
02:52PM 18 violence would be more severe than they were on February 1st.

02:52PM 19 Q. So there's still a threat to the safety of the campus and  
02:52PM 20 to Dr. Kershner?

02:52PM 21 A. If he were to come back, I believe, yes, there would be.

02:52PM 22 Q. Okay. I want to show you what we pre-marked as  
02:52PM 23 Defendant's Exhibit 35. Do you recognize this document?

02:53PM 24 A. Yes, I do.

02:53PM 25 MS. PANTZER: Barry, can you stipulate?

MR. COVERT: If I can open my three-ring binder for it. Yes.

MS. PANTZER: Thank you.

THE COURT: This is Exhibit 35?

MS. PANTZER: Yes, Your Honor. I think it's defendant's last exhibit.

THE COURT: I think I only have 34. Hang on.

MS. PANTZER: I'm happy to provide the Court with a copy.

THE COURT: I have it. I didn't have it tabbed.

BY MS. PANTZER:

Q. Chief Isaacson, showing you what's been marked as Exhibit 35 --

THE COURT: It's received, by the way, without objection.

MS. PANTZER: Thank you, Your Honor.

**(Defendant's Exhibit 35 was received in evidence.)**

BY MS. PANTZER:

Q. Why did you draft this memorandum?

A. On January 3rd of this year, I was called by an FBI colleague, Chad Artrip, and he told me that the FBI was conducting an investigation. He said that the nature of the underlying investigation was something that he could not disclose to me, but that during the course of the investigation, FBI agents found that there was a threat to

02:54PM 1 the safety of Dr. Kershinar. That threat met the FBI's  
02:54PM 2 criteria for a duty to warn Professor Kershinar, and also the  
02:54PM 3 campus.

02:54PM 4 So, Special Agent Artrip was notifying me, as well, that  
02:54PM 5 there was a threat.

02:54PM 6 The information I got was that there was no information  
02:54PM 7 regarding the credibility of the threat. And I want to make  
02:54PM 8 this distinction because it's important.

02:54PM 9 He did not say there's no credible threat. He said  
02:54PM 10 there's no information about the credibility of the threat.  
02:55PM 11 And that's a distinction with an important semantic  
02:55PM 12 difference.

02:55PM 13 The threat met the FBI's duty to warn criteria. Special  
02:55PM 14 Agent Artrip eventually contacted Dr. Kershinar to convey this  
02:55PM 15 information, and he conveyed it to me.

02:55PM 16 Special Agent Artrip did tell me this was a sensitive  
02:55PM 17 investigation. I don't know what that means other than those  
02:55PM 18 words.

02:55PM 19 Q. And this was in January of 2023?

02:55PM 20 A. Correct.

02:55PM 21 Q. Just briefly, I just want to touch a little bit more on  
02:55PM 22 the difference between "no credible threat" and "not being  
02:55PM 23 certain whether a threat is credible." Am I misstating that  
02:56PM 24 probably? Could you -- could you talk about that a little  
02:56PM 25 further?



02:56PM 1 A. Sure. The information I got from the FBI was there was  
02:56PM 2 no information to judge the credibility of the threat. There  
02:56PM 3 was a threat, they had no information to judge the  
02:56PM 4 credibility on that threat. They didn't know if it was a low  
02:56PM 5 threat, a medium threat, a high threat, an imminent threat, a  
02:56PM 6 long-term threat. No information. It was -- the information  
02:56PM 7 was enough though that it caused the FBI to reach out to me  
02:56PM 8 and to Dr. Kershner.

02:56PM 9 Contrast that with we have a threat that's not credible.  
02:56PM 10 A simple example would be that you have a person that is  
02:56PM 11 physically incapable of carrying out an attack. If somebody  
02:56PM 12 were very, very old, and said to Mike Tyson, I'm gonna knock  
02:57PM 13 you out, that is a threat that is not credible. And that's  
02:57PM 14 the distinction here.

02:57PM 15 Q. Would any of these threats that we've reviewed today, is  
02:57PM 16 there any way to know whether or not they'll lead to actual  
02:57PM 17 violence for sure?

02:57PM 18 A. No. And one of the hallmarks of this field of threat  
02:57PM 19 assessments and threat mitigation is we're in the business of  
02:57PM 20 preventing threats, not predicting them. I can't predict, no  
02:57PM 21 one can predict, what person is going to offend and when.

02:57PM 22 What we can do is things that we know work. We can do  
02:57PM 23 things that are preventative, that we know work to prevent  
02:57PM 24 violence.

02:57PM 25 I mentioned earlier those thousands of cases that the FBI

1 has touched where not one person's gone on to offend. These  
2 people that were generating very, very high levels of  
3 concern, so much so that those got to the FBI. We know what  
4 to do to reduce the risk of targeted violence.

5 I think I lost track of your question.

6 Q. That's okay. I think you've answered it.

7 A. Okay. What -- okay, I'm sorry.

8 THE COURT: Next question.

9 MS. PANTZER: Thank you, Your Honor.

10 BY MS. PANTZER:

11 Q. Chief Isaacson, if Dr. Kershner were returned to campus,  
12 could you tell the Court what you believe, in your  
13 professional opinion, would follow?

14 A. If he were to come back, there would be an intense and  
15 ongoing echo chamber effect on social media, perhaps  
16 traditional media, where more and more people would be  
17 exposed to information that would lead them to believe that  
18 Dr. Kershner is a pedophile, he is physically located on  
19 Fredonia's campus, Fredonia knows about it, and because they  
20 know about it and because he's on campus, the campus itself  
21 and the administrators are complicit and responsible.

22 That would generate a bigger tidal wave of threatening  
23 messages than what we saw in February of 2022.

24 The police department there would be absolutely  
25 overwhelmed with the volume of threats.

1 The campus community would be very, very concerned and  
2 perhaps terrified.

3 I think there would be ancillary effects in inhouse  
4 people viewed Fredonia and behaved, I think they're outside  
5 of the scope of this, but it would change the character of  
6 the university, and in my view, it would put Fredonia at  
7 a -- at a much higher, higher, not quantifiable, but a much  
8 higher risk of a targeted violence event occurring on the  
9 campus.

10 If such an attack were to occur, it almost certainly  
11 wouldn't happen right away. It almost certainly would not  
12 happen right away. If he were to come back tomorrow, I would  
13 expect to see that same kind of behavior that -- that the FBI  
14 has seen in hundreds of other cases that have been studied  
15 where that grievance builds, there's ideation about an act of  
16 violence, there's research and planning, preparation, the  
17 breach, and then finally the attack. And that may be a  
18 period of months, it might be a year or two.

19 All we can do is do things that we know are preventative.

20 In this case, because this whole equation is turned  
21 upside down now where we're looking at an unknown anonymous  
22 external population instead of a known identified internal  
23 population, my former colleagues at Fredonia and colleagues  
24 in law enforcement, they will not be able to see danger  
25 coming until it's on the campus.

03:01PM 1 MS. PANTZER: I believe I'm done, Your Honor. May I  
03:01PM 2 have a moment to consult with my colleagues?  
03:01PM 3 THE COURT: Of course.  
03:01PM 4 MS. PANTZER: We're done. Thank you, Your Honor.  
03:01PM 5 THE COURT: Cross-examination. Who's going to do it?  
03:01PM 6 MR. COVERT: I am, Your Honor.  
03:01PM 7 This would be a good time, I believe, for a break so  
03:01PM 8 that my paralegal can set up the computer for the exhibits.  
03:01PM 9 THE COURT: Sure. How long do you think you need?  
03:01PM 10 MR. COVERT: Ten or 15 minutes to get set up.  
03:01PM 11 THE COURT: Okay. So let's -- it's 3:00, we'll come  
03:01PM 12 back at a little past 3. Come back at 3:15.  
03:01PM 13 MR. COVERT: Perfect.  
03:02PM 14 THE COURT: We'll resume then, and we'll go, as I  
03:02PM 15 said, close to 5.  
03:02PM 16 MR. COVERT: Thank you, Your Honor.  
03:02PM 17 THE CLERK: All rise.  
03:02PM 18 (Off the record at 3:02 p.m.)  
03:16PM 19 (Back on the record at 3:16 p.m.)  
03:16PM 20 THE CLERK: All rise.  
03:16PM 21 THE COURT: Please be seated.  
03:16PM 22 THE CLERK: We are back on the record for the  
03:16PM 23 continuation of an evidentiary hearing in 23-CV-525, Kershner  
03:17PM 24 versus Kolison, et al.  
03:17PM 25 All counsel and parties are present.

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THE COURT: Mr. Covert, you can begin your cross-examination.

I remind the witness that he's still under oath.

THE WITNESS: Yes, Judge.

MR. BOYD: Barry, just before you start --

Your Honor, our second witness is still here. I'm not sure if the Court is inclined to continue with that witness later this afternoon, or if I should just release him for the day and instruct him to come back tomorrow. He's happy to wait and see, but if you know we're not going to get to him, I'd rather let him go.

THE COURT: Thoughts?

MR. COVERT: Your Honor, I think that we're going to take the rest of the day.

THE COURT: Yeah.

MR. COVERT: I have no issue with whatever time we're done, we're done for the day.

THE COURT: Yeah. Let him go.

MR. BOYD: Okay. I'll tell him he can go.

Your Honor, do you know what time you'd like to start tomorrow morning?

THE COURT: I think I have a 9:00.

THE CLERK: Based on the calendar, 9:00, Judge, for a plea.

THE COURT: A plea.

03:17PM 1 MR. BOYD: What time would you like us to have the  
03:17PM 2 witness.

03:17PM 3 THE COURT: 10:00.

03:17PM 4 MR. BOYD: 10:00?

03:17PM 5 THE COURT: Yeah.

03:17PM 6 MR. BOYD: Fair enough.

03:18PM 7 THE COURT: We'll start at 10:00, or as soon as my  
03:18PM 8 9:00 is done, whichever is later.

03:18PM 9 MR. BOYD: Okay.

03:18PM 10 THE COURT: Yeah. So 10 would be the earliest we  
03:18PM 11 would start.

03:18PM 12 MR. BOYD: Thank you, Your Honor.

03:18PM 13

03:18PM 14 **CROSS-EXAMINATION BY MR. COVERT:**

03:18PM 15 Q. Good afternoon, Mr. Isaacson. How are you doing?

03:18PM 16 A. I'm good, sir. Good afternoon.

03:18PM 17 Q. I'm Barry Covert.

03:18PM 18 So you indicated that you were chief of security at  
03:18PM 19 Fredonia for about four years; is that correct?

03:18PM 20 A. Yes, chief of University Police.

03:18PM 21 Q. And your prior experience was in the FBI. And in the FBI  
03:18PM 22 you -- the FBI would create what was known as 302 reports?

03:18PM 23 A. Yes.

03:18PM 24 Q. Correct? And what were those?

03:18PM 25 A. They're non-verbatim summaries of interviews.

03:18PM 1 Q. Okay. And roughly speaking, in the case report detail  
03:18PM 2 that you were shown earlier today, was that the Fredonia  
03:18PM 3 police's version of a 302 in general terms?

03:19PM 4 A. No. This -- this was not documented as outside of the  
03:19PM 5 email -- or, the voicemails to the campus, or the note that  
03:19PM 6 was placed on Dr. Kershnar's door. Those episodes I had my  
03:19PM 7 investigator take the lead on documenting those matters. I  
03:19PM 8 documented what, you know, my conclusions of my work in those  
03:19PM 9 threat assessments.

03:19PM 10 Q. And do you have any other documents that you created  
03:19PM 11 dealing with the ongoing issues relating to Professor  
03:19PM 12 Kershnar's situation, such as communications internally or  
03:19PM 13 externally with other law enforcement agencies, any documents  
03:19PM 14 like that?

03:19PM 15 A. No. No. I turn everything over to counsel that I had  
03:19PM 16 and produced.

03:19PM 17 Q. So for example, after you became aware of the  
03:20PM 18 controversy, if we can call it that, on February 1st and 2nd,  
03:20PM 19 did you then communicate with the SUNY Fredonia admission  
03:20PM 20 about the situation?

03:20PM 21 A. I did, verbally.

03:20PM 22 Q. Only verbally?

03:20PM 23 A. Yes, sir.

03:20PM 24 Q. Never through emails?

03:20PM 25 A. I don't believe I did. And if I did, I turned those over

1 to counsel.

2 Q. No other communications --

3 A. A lot --

4 Q. -- in writing?

5 A. No.

6 Q. Okay. So, shortly after this incident occurred, you were

7 concerned, weren't you, with the physical safety of

8 Dr. Kershnar --

9 A. That's correct.

10 Q. -- correct?

11 MR. COVERT: And I'm sorry, Your Honor, we're just

12 getting the exhibits together today, we got them late on

13 Monday, so it's not going to be as smooth as we'd like.

14 So Plaintiff's 89, please, Megan.

15 BY MR. COVERT:

16 Q. Now, this is an --

17 MR. COVERT: If you don't mind enlarging it a little

18 bit, Megan. And if you can scroll down just a little bit.

19 BY MR. COVERT:

20 Q. Now, can you describe what this series of emails is

21 about?

22 A. Sure. This is very early, very early in my exposure to

23 this controversy, if that's the term we're using. It was

24 10:23 on February 2nd. And I had not formulated any

25 conclusions, I was gathering information. And one of the



possibilities that I was considering was that if Dr. Kershnar were on campus, I would want to have a conversation with him about how University Police and he could work together to keep him safe and keep the campus safe.

Q. And what types of measures were you envisioning when you had written this email indicating you wanted to speak with him and have a discussion with him. And I'm reading from the email where he expects to be on campus and when, methods for him to immediately advise UPD of a safety concern, methods for UPD to advise if we become aware of a credibility threat to his physical safety.

Were there other measures you were envisioning taking on that day?

A. I was to reemphasize this was very early on this, so I hadn't really had a chance to understand the magnitude of what was going on. I knew it was a potential human resources issue with an employee, and that's why I was interacting with my colleague Maria Carroll, who is the director of HR. I wanted to make sure I didn't get in her lane, if there was any employee issues. I just didn't know. So, my purpose in this email was explaining to the HR director that there's this issue going on, she may or may not have been aware of it at that moment.

I was -- I was gathering my options, my -- my, you know, potential courses of action, but this was --

03:23PM

1 Q. Very early on?

03:23PM

2 A. -- very early on.

03:23PM

3 Q. But at this point, you were not new to SUNY Fredonia,

03:23PM

4 were you? You had been there, my rough calculations, for

03:23PM

5 roughly two-and-a-half years?

03:23PM

6 A. That's correct.

03:23PM

7 Q. You were very familiar with the operations of the police

03:23PM

8 department there; is that correct?

03:23PM

9 A. That's right.

03:23PM

10 Q. You indicated that there were about 300 cameras on the

03:23PM

11 campus?

03:23PM

12 A. That's right.

03:23PM

13 Q. And I assume that there are individuals who are tasked

03:23PM

14 with watching the monitors for those cameras?

03:23PM

15 A. Yes. I can explain that if you'd like.

03:24PM

16 Q. Sure.

03:24PM

17 A. There's two large TV monitors, maybe double the size of

03:24PM

18 what we see in the courtroom. Different officers and

03:24PM

19 dispatchers set them up differently, depending on what's

03:24PM

20 going on on campus that day. But at any one time, a live

03:24PM

21 human being is watching on the order of 25 to 40 cameras,

03:24PM

22 depending on how they have things set up. So not all 300

03:24PM

23 cameras have a human being watching them live.

03:24PM

24 Q. Okay. And, generally speaking, how many individuals are

03:24PM

25 watching the cameras at any given time, the monitors?

03:24PM 1 A. One.

03:24PM 2 Q. Just one. And at that time, were there also phones set  
03:24PM 3 up around the university, around the college campus, for  
03:24PM 4 emergency purposes? It's my understanding there's roughly  
03:24PM 5 200, but I don't want to testify, you can certainly correct  
03:24PM 6 me or tell the Court what the situation is.

03:24PM 7 A. I forget the exact number. There's a suite of emergency  
03:25PM 8 cameras. We call them blue light phones. I think a lot of  
03:25PM 9 SUNY campuses have them, with the blue light on top. A user  
03:25PM 10 can actually hit a button, and that immediately dials into  
03:25PM 11 the University Police dispatch office.

03:25PM 12 Those are typically outdoor cameras -- pardon me, outdoor  
03:25PM 13 phones. There are emergency phones at the entrances of all  
03:25PM 14 the dormitory lobbies and several through academic buildings.  
03:25PM 15 Rough order magnitude, 40 or 50 emergency phones.

03:25PM 16 Q. Can you explain how the phones are intertwined with  
03:25PM 17 cameras, and how if -- my understanding is if a phone is  
03:25PM 18 picked up or if there's a call made from one them, then the  
03:25PM 19 cameras in the area focus upon that, and it calls the person  
03:26PM 20 who's watching the monitors to then focus their attention  
03:26PM 21 upon those areas, correct?

03:26PM 22 A. Almost correct. It's not an automated process. That is  
03:26PM 23 one of the technology adders that I was exploring before I  
03:26PM 24 left. If a blue light phone or emergency phone is activated,  
03:26PM 25 the dispatchers get out a physical hard copy book, they say,

03:26PM 1 oh, that's phone number 13. They look up on a table where  
03:26PM 2 that phone is physically located, and they pull up cameras  
03:26PM 3 that are geographically close to that phone. And then they  
03:26PM 4 can see realtime what's going on. So it's a 30-second or so  
03:26PM 5 process to do that.

03:26PM 6 Q. And it's fair to describe campus security as a mosaic in  
03:26PM 7 the sense that there are a lot of pieces, and you try have  
03:26PM 8 the pieces all work together: The cameras, with the phones,  
03:26PM 9 with the car -- two people on car patrol, with an officer  
03:26PM 10 back in the station, and monitoring the phones, 911 calls.  
03:27PM 11 Is it fair to state that that's just an overall comprehensive  
03:27PM 12 way to monitor the campus, correct?

03:27PM 13 A. That's correct.

03:27PM 14 Q. And that is, in part, to keep a lot of situations under  
03:27PM 15 control when it comes to student safety, staff safety,  
03:27PM 16 including people from the outside of the campus coming onto  
03:27PM 17 campus committing crimes, dealing drugs, violating orders of  
03:27PM 18 protection, correct?

03:27PM 19 A. Yes.

03:27PM 20 Q. These are all issues that you are dealing with when  
03:27PM 21 you're in charge of security on a daily basis, hourly basis.  
03:27PM 22 So if the fact that there may be protests is something that  
03:27PM 23 also may come up, correct, on campus for various reasons?

03:27PM 24 A. Sure. Protests occur on campus, certainly.

03:27PM 25 Q. Describe to us then what happens when you're made aware

1 of a protest. What is the normal response?

2 A. In my tenure in four years, we didn't have many. We had  
3 one. It was students getting together and doing a march  
4 through the campus and through the village. And we monitored  
5 that with our cameras. Typically we keep uniformed officers  
6 away from the crowd just to -- in an effort not to inflame  
7 tensions, especially after the George Floyd incident.

8 Q. Okay. And so this -- showing you -- bringing you back  
9 again to the exhibit that we have just put up here --

10 MR. COVERT: And I'm not seeing the number on it  
11 again.

12 MR. BOYD: 89.

13 BY MR. COVERT:

14 Q. -- 89. Scrolling back down again, this is the standard  
15 response which you outlined here on Exhibit 89, which is an  
16 email that you drafted on February 2nd, 2022. That is the  
17 standard response, correct, to an incident where there may be  
18 a safety concern for a professor, or student, staff on  
19 campus?

20 A. I think that mischaracterizes it, in only that -- if  
21 there were a concern about safety to an employee, I would  
22 want to have that conversation with that employee.

23 Again, in my tenure, those were very few and far between.  
24 This turned out not to be a, you know, the idea of having him  
25 on campus, as I became aware of the enormity and scale of

03:29PM 1 this concern, the prospect of having him on campus was  
03:29PM 2 something I discounted.

03:29PM 3 Q. Well, and I wanted to get into that in a second.

03:29PM 4 A. Okay.

03:29PM 5 Q. But I don't want to cut you off.

03:29PM 6 A. Yeah, I just -- I guess I just don't want to give the  
03:29PM 7 impression that there is a standard response for individual  
03:30PM 8 cases. Each case requires a tailor-made response given the  
03:30PM 9 circumstances.

03:30PM 10 Q. So pretty shortly after you issued this email on  
03:30PM 11 February 2nd at 10:23 a.m., your position changed in relation  
03:30PM 12 to what should occur with Dr. Kershner, specifically whether  
03:30PM 13 he should be physically on campus, correct?

03:30PM 14 A. That's right. At this time, I don't think I even  
03:30PM 15 considered that I had the authority or that anybody had the  
03:30PM 16 authority to exclude him from the campus. I knew if anybody  
03:30PM 17 did have that authority, it was at least the president.  
03:30PM 18 So --

03:30PM 19 Q. And were there communications between you and the  
03:30PM 20 president then that discussed removing him from campus?

03:30PM 21 A. No. Not this early. No. My recollection is talking to  
03:30PM 22 the president at least later in the -- that -- that day, on  
03:30PM 23 February 2nd.

03:30PM 24 Q. With whom did you first discuss the possibility of  
03:30PM 25 removing him from campus, as opposed to taking the steps that

1 are set forth in exhibit -- Plaintiff's Exhibit 89?

2 A. Mike Metzger, who is the VP, the vice-president that I  
3 reported to.

4 Q. And do you have emails or communications, written  
5 communications with Mr. Metzger regarding what steps to take  
6 in light of the controversy?

7 A. No. I had a lot of verbal conversations at -- throughout  
8 this issue. I did not email, I needed to get ahold of people  
9 quickly on this, so I called them.

10 Q. And what alternatives to removing Dr. Kershnar from the  
11 campus did you discuss with Mr. Metzger or anybody else prior  
12 to coming to a final decision?

13 A. I don't recall conversations where I brainstormed other  
14 arrangements to have the professor on campus. Over the  
15 course of this first day, as I became aware of the scale of  
16 this issue, my concern grew. And I came to the conclusion  
17 that the only way, at least in this early -- in the early  
18 days of this, you know, keeping it -- keeping in mind that I  
19 knew what I knew then, early in the day I didn't know that  
20 having Dr. Kershnar removed from campus was a possibility.

21 As I became more familiar with the issue that was  
22 developing, I became more concerned. At some point later in  
23 the day, and I don't remember what time of day --

24 Q. And we're talking about February 2nd?

25 A. Yes, sir. I concluded on my own that the only way to

1 keep the campus safe in light of what -- the concerns I was  
2 developing was to have him off campus. My recollection, and  
3 it's not a specific recollection, is that I spoke to  
4 Vice-President Metzger about that. At some point --

5 Q. And did he inform you that you had the power to remove  
6 Dr. Kershnar, or who came -- who made that determination that  
7 you even had the authority to remove a college professor from  
8 the campus?

9 A. I was never under the impression that I had that  
10 authority. I knew that if -- if -- if he were told -- if  
11 Dr. Kershnar were told that he couldn't come on campus, I  
12 would at most be the messenger conveying an order from the  
13 president.

14 Q. Okay. And did the order to remove Dr. Kershnar from the  
15 campus come from the president?

16 A. Yes. Yes.

17 Q. And how did that come about? Just logistically walk us  
18 through the steps as to how. Who discussed this with who,  
19 what was discussed, and how did they come to the decision  
20 that he was going to be removed from the campus?

21 A. My recollection is I had preliminary discussions with  
22 Vice-President Metzger. He was my direct report.

23 As this day unfolded, I came to the conclusion that  
24 Dr. Kershnar should remain off campus. He was scheduled to  
25 remain off campus for a few days. My recommendation would



1 ultimately be that he should stay off campus for this  
2 cooling-off period.

3 Q. And was this your idea now, or Mr. Metzger's?

4 A. Mine.

5 Q. And what did Mr. Metzger respond when you floated that  
6 idea to him?

7 A. He agreed. He deferred to my judgment. And together, I  
8 broached the idea that I could prepare a memo that explains  
9 my thinking. And I recall that he concurred that that would  
10 be a good idea, and that's what generated this.

11 Q. And were there -- and did anybody else participate in  
12 drafting the February 2nd threat assessment memo? Is that  
13 what you're talking about?

14 A. Yes. Yeah, when I -- I'm sorry.

15 Q. And was anybody else involved with drafting that?

16 A. No. No. None of the memos were authored by anybody  
17 other than me. I was the author for those.

18 Q. And then when did you approach the president, President  
19 Kolison?

20 A. I believe it was later that evening. At -- at some  
21 point, and there's a memo that documents my conversations  
22 with -- with Dr. Kershner, I conveyed the order that he was  
23 to stay off campus.

24 Q. And what did the president say about removing a teacher  
25 off campus, a professor off campus? Was there any discussion

1 of his First Amendment rights?

2 A. We did not talk about anything other than safety issues.

3 Q. Strictly safety issues?

4 A. Yes, sir.

5 Q. Did you present any alternatives to the president short  
6 of removing Dr. Kershner from the campus?

7 A. I didn't believe there were alternates that would work,  
8 so I did not.

9 Q. Did Mr. Metzger or the president, did either of them ask  
10 for any alternatives short of removing Dr. Kershner from the  
11 campus prior to your doing so on February 2nd?

12 A. No.

13 Q. None at all?

14 A. They deferred to my recommendation.

15 Q. So then --

16 MR. COVERT: I would like to move Plaintiff's  
17 Exhibit 89 into evidence, Your Honor.

18 MS. PANTZER: No objection, Your Honor.

19 THE COURT: Received without objection.

20 **(Plaintiff's Exhibit 89 was received in evidence.)**

21 MR. COVERT: Megan, if you can do Plaintiff's 17. Do  
22 you recognize this -- can you scroll down, Megan?

23 BY MR. COVERT:

24 Q. Do you recognize that? That -- do you recognize that  
25 communication?

03:37PM 1 A. I do. Is the date of this on --

03:37PM 2 Q. It is on a later one. We're trying to find it, because  
03:37PM 3 it's one of the later documents we got in discovery.

03:38PM 4 MR. COVERT: Megan, if you would try 73, please. If  
03:38PM 5 you can scroll down a little bit.

03:38PM 6 BY MR. COVERT:

03:38PM 7 Q. Do you recognize that --

03:38PM 8 A. Yes, thank you.

03:38PM 9 Q. -- communication? And what is that?

03:38PM 10 A. That is an email from Dr. Kershinar to me and president --  
03:38PM 11 I'm sorry, he copied himself. It's just an email from  
03:38PM 12 Dr. Kershinar to me. And he's commenting -- he's responding  
03:38PM 13 to a verbal telephone conversation I had with him the evening  
03:38PM 14 before.

03:38PM 15 Q. And he's also asking for details as to why he's being  
03:39PM 16 ordered to stay off campus; is that correct?

03:39PM 17 A. That's correct.

03:39PM 18 Q. And did you give him an answer to that question?

03:39PM 19 A. I forwarded that to our HR director for a response.

03:39PM 20 Q. And do you know whether there was a response to that?

03:39PM 21 A. There was.

03:39PM 22 Q. There was. And what was -- do you know what the response  
03:39PM 23 was?

03:39PM 24 A. I -- I -- I would be guessing. I recall seeing an email  
03:39PM 25 from HR director Maria Carroll to Dr. Kershinar.

03:39PM 1 Q. And Dr. Kershner, in this exhibit, 73, is also asking --

03:39PM 2 MR. COVERT: If you can scroll down, Meg, a little  
03:39PM 3 bit.

03:39PM 4 BY MR. COVERT:

03:39PM 5 Q. -- he's also asking at number 7 to teach via Zoom or  
03:39PM 6 virtually, correct?

03:39PM 7 A. That's right.

03:39PM 8 Q. And what was your position as to whether he could take --  
03:39PM 9 he could teach virtually if he was not allowed to be back on  
03:40PM 10 campus?

03:40PM 11 A. My recommendation to the president was that he should not  
03:40PM 12 be allowed to for the reasons I articulated on direct.

03:40PM 13 Q. And what was the president's response to your suggestion  
03:40PM 14 that he not be permitted to return to campus -- or, I'm  
03:40PM 15 sorry, to return via Zoom?

03:40PM 16 A. He approved my recommendation.

03:40PM 17 Q. And did you consult with any other experts to determine  
03:40PM 18 whether his teaching via Zoom would somehow cause danger to  
03:40PM 19 the campus community?

03:40PM 20 A. No.

03:40PM 21 Q. No one else?

03:40PM 22 A. No.

03:40PM 23 Q. This is just your opinion that we're going by at this  
03:40PM 24 point?

03:40PM 25 A. Yes. Um-hum.

03:40PM 1 Q. And to this day, has he been permitted to teach via Zoom?

03:40PM 2 Or as of when you resigned on June 30th of 2023?

03:40PM 3 A. My understanding was that he was given a pathway to teach

03:40PM 4 online. I'm getting out of my lane a little bit as to how

03:40PM 5 that was resolved, but my understanding was that he was

03:40PM 6 required by the provost to complete some training to allow

03:41PM 7 him to teach online, and I believe he has not done that

03:41PM 8 training.

03:41PM 9 Q. Now, there also -- there came a time in which it's fair

03:41PM 10 to say that the publicity had waned, and the threats had

03:41PM 11 significantly lessened to the campus, correct?

03:41PM 12 A. That's correct.

03:41PM 13 Q. Over how long of a period of time did that take for the

03:41PM 14 publicity to wane and the threats to decrease?

03:41PM 15 A. I would say three or four weeks, five weeks.

03:41PM 16 Q. And that's prior to your March 17th threat assessment?

03:41PM 17 A. Yes.

03:41PM 18 Q. So as the threats began to wane, did you consider

03:41PM 19 alternative measures that would allow Dr. Kershinar to return

03:42PM 20 to the campus and teach at the campus?

03:42PM 21 A. As I documented in my memoranda, I came to the view that

03:42PM 22 bringing him back would make the threat environment worse

03:42PM 23 than it was on February 2nd and 3rd, that at the peak of my

03:42PM 24 level of concern, I believed if he were to come back, the

03:42PM 25 threat picture would be even more difficult.

03:42PM 1 Q. So, initially, after right around the time of  
03:42PM 2 February 2nd, there was media focus on the Fredonia campus,  
03:42PM 3 correct?

03:42PM 4 A. That's correct.

03:42PM 5 Q. You indicated that FOX News was running stories at  
03:42PM 6 9 p.m.?

03:42PM 7 A. I saw one story.

03:42PM 8 Q. And there was increased scrutiny on social media after  
03:42PM 9 February 2nd, correct?

03:42PM 10 A. Yes.

03:42PM 11 Q. And that was your -- and that and the threats were your  
03:43PM 12 justification for keeping him off campus, correct?

03:43PM 13 A. Yes. It was -- it was -- I would use the term  
03:43PM 14 rationalization. It was the evidence that I needed, or  
03:43PM 15 that -- it was the evidence supported my conclusion.

03:43PM 16 Q. And then -- and you indicated that you wanted him to be  
03:43PM 17 removed from the campus for a, quote, cooling down, unquote,  
03:43PM 18 period, correct?

03:43PM 19 A. Yes. When I made the initial assessment.

03:43PM 20 Q. So isn't it the fact that the media scrutiny lessened and  
03:43PM 21 waned, and the social media attention waned three or four  
03:43PM 22 weeks later, isn't that evidence that the cooling down  
03:43PM 23 occurred?

03:43PM 24 A. Oh, absolutely it did, yes.

03:43PM 25 Q. And then why wouldn't you then say we can bring him back

03:43PM 1 on campus and see how this goes now?

03:43PM 2 A. Because it would, in my view, bring back a higher level

03:43PM 3 of anger, disgust, violent rhetoric, just violence

03:44PM 4 justification among the public than we saw those five or six

03:44PM 5 weeks earlier.

03:44PM 6 Q. So let's just call this late February. Late February,

03:44PM 7 everything's cooled down. Were there any -- was there any

03:44PM 8 evidence of imminent danger to Dr. Kershnar or the campus at

03:44PM 9 that point?

03:44PM 10 A. No.

03:44PM 11 Q. Were there any identified parties that were -- had

03:44PM 12 verified threats of violence against Dr. Kershnar or the

03:44PM 13 campus that the point?

03:44PM 14 A. There were threatening communications, but as I explained

03:44PM 15 on direct, nothing that would be prosecuted by the U.S.

03:44PM 16 Attorney's Office or District Attorney. It wasn't that

03:44PM 17 explicit directed threat that constitutes a violation of

03:44PM 18 criminal law.

03:44PM 19 Q. And I want to talk about that.

03:44PM 20 So in the beginning of February, until things waned down,

03:44PM 21 there were a number of threats to Dr. Kershnar, to the

03:44PM 22 campus, correct?

03:44PM 23 A. Yes.

03:44PM 24 Q. And you testified earlier that none of them rose, in your

03:45PM 25 mind, to the level that they could be successfully prosecuted

1 by the U.S. Attorney's Office; is that correct?

2 A. That's right.

3 Q. But you also described that the behavioral unit that you  
4 were involved with at the FBI engages in a lot of outreaches  
5 to individuals who they suspect could be perpetrating some  
6 level of violence in the future, correct?

7 A. Sure.

8 Q. You describe the -- the -- I forgot the phrase you used  
9 for it, but the pathway to -- the -- the four levels of --  
10 pathway of violence, correct?

11 A. Yes.

12 Q. And those individuals that are reached out to by the BAU  
13 unit, those individuals would have been referred for criminal  
14 prosecution if they had done enough to be prosecuted,  
15 correct?

16 A. Not always. And I think here it's worth pausing.

17 That -- that in many of these cases, the threat  
18 mitigation is not criminal sanctions. In fact, that can make  
19 the problem a lot worse in a few ways.

20 Most -- most threat cases are prosecuted in state court  
21 and the penalties are not severe typically. People are not  
22 going to prison for years for threatening to kill somebody  
23 personally, face to face, or in an intrastate phone call.  
24 That's just not what happens. It's -- they're usually  
25 misdemeanor offenses, maybe somebody will go to jail, but it



03:46PM 1 won't be for long.

03:46PM 2 So the idea of eliminating a threat posed by a particular  
03:46PM 3 individual very often isn't mitigated by incarcerating the  
03:46PM 4 person 'cuz it just doesn't last very long. Even in  
03:46PM 5 exceptional cases where there is prison time, and it's more  
03:47PM 6 often on the federal side, now you have an aggrieved person,  
03:47PM 7 you've put him in prison, that may not cure the grievance.  
03:47PM 8 In fact, from a threat assessment standpoint, it may make it  
03:47PM 9 a lot worse.

03:47PM 10 So there's that sort of individual specific effect that  
03:47PM 11 that the typical threat mitigation action is connecting a  
03:47PM 12 person with social services, or for a young person,  
03:47PM 13 introducing a responsible adult into --

03:47PM 14 Q. And that's what BAU does, they make these decisions --

03:47PM 15 A. That's what they recommend.

03:47PM 16 Q. That's what they recommend.

03:47PM 17 A. That's -- that's part what works. But if I can just  
03:47PM 18 expand on that a little bit. Because the idea of arresting  
03:47PM 19 our way out of this problem, my judgment was that especially  
03:47PM 20 in today's day and age, whenever the police show up or law  
03:48PM 21 enforcement shows up, a camera gets out. And I've thought  
03:48PM 22 about it then and I've thought about it since, that a way to  
03:48PM 23 make this problem worse would be to create video footage of  
03:48PM 24 law enforcement officers arresting or questioning people who  
03:48PM 25 were disgusted about pedophilia and how that would feedback

1 into this -- this social media echo chamber.

2 Q. You've got those individuals that are making these  
3 threats in February of 2022, correct?

4 A. Yes.

5 Q. And if you wanted -- if you were concerned that these  
6 individuals are on their pathway of violence, right, you  
7 would report them to the FBI, correct? You would want  
8 them -- some level of review. Whether they intervene or not  
9 is up to them, correct?

10 A. No, that's not correct. That's not how the system works.

11 The FBI is finite in its resources. They got the worst  
12 of the worst threat assessment cases, not -- not a case like  
13 this where there are literally hundreds of people online  
14 making threatening and concerning statements online.

15 The FBI's not gonna take that case and open a case on a  
16 thousand individuals or a hundred individuals that are  
17 issuing concerning statements online and do a full threat --  
18 first off, identify them from their monikers on social media,  
19 locate them, that takes federal process and subpoenas, and  
20 then do a full-blown threat assessment on them.

21 My concern was that these are the people that are issuing  
22 threats or threatening communications or concerning  
23 communications to Dr. Kershinar and to the campus. These are  
24 the ones that we can see. With the limited resources that we  
25 have at University Police, these are the ones that we can see

1 and the ones that we can look at.

2 In my professional opinion, there's an enormous  
3 population of people who are just as angry and aren't taking  
4 the time or the energy to comm --

5 Q. I'm not asking about them. I'm asking about these  
6 individuals. We're talking about those who made threats.

7 Did you report any of them in February of 2022, did your  
8 level of concern at the rhetoric or at the threats cause you  
9 to report any of those individuals to outside law enforcement  
10 agencies?

11 A. No, but that doesn't reflect on my level of concern --

12 Q. Just -- I'm just asking a question --

13 A. But I want to give --

14 Q. The answer is no?

15 A. The answer is no.

16 Q. So, none were reported whatsoever.

17 A. We did get some phone numbers for phone calls into the  
18 FBI, or pardon me, into campus, that I asked my colleague at  
19 the FBI to run those numbers and see if any of those people  
20 were on the Bureau file --

21 Q. Were there any memos or emails that reflect your request  
22 to the FBI to run numbers? Because we have seen none.

23 A. I did not generate any. I don't think so.

24 Q. Everything you ever do is just orally, you never  
25 memorialize anything?

03:51PM 1 MS. PANTZER: Objection, Your Honor.

03:51PM 2 THE COURT: Basis?

03:51PM 3 MS. PANTZER: That's not the testimony.

03:51PM 4 THE COURT: Then he can say no. Overruled.

03:51PM 5 THE WITNESS: I documented my work in my assessments  
03:51PM 6 as difficult in these threat assessments.

03:51PM 7 BY MR. COVERT:

03:51PM 8 Q. So other than asking -- claiming that you asked some  
03:51PM 9 friends to run some phone numbers, you did not report any of  
03:51PM 10 these threats in February of 2022 to any outside law  
03:51PM 11 enforcement agencies; that's correct?

03:51PM 12 A. That's correct.

03:52PM 13 Q. So none of them rose to the level of these articulated  
03:52PM 14 threats to the level that you thought were worthy of law  
03:52PM 15 enforcement investigation, correct?

03:52PM 16 A. None of them rose to the level that I felt would be  
03:52PM 17 prosecuted.

03:52PM 18 Q. Now, well, that's not your decision, right? That's  
03:52PM 19 the --

03:52PM 20 A. Correct.

03:52PM 21 Q. -- decision of the prosecution?

03:52PM 22 A. Yes, sir.

03:52PM 23 Q. The U.S. Attorney's Office or the District Attorney,  
03:52PM 24 right? Many cases get investigated and are not prosecuted,  
03:52PM 25 correct?

03:52PM 1 A. That's right.

03:52PM 2 Q. Okay. So then the attention dissipates, the attention --  
03:52PM 3 none of which was even bad enough for you to ever report any  
03:52PM 4 of it to law enforcement -- dissipates, and yet you thought  
03:52PM 5 that when the attention dissipated, that that was a sign that  
03:52PM 6 things would get worse if Dr. Kershner were brought back to  
03:52PM 7 campus?

03:52PM 8 A. Yes.

03:52PM 9 Q. But things weren't even bad enough for you to report  
03:52PM 10 anybody to law enforcement from February 2nd, roughly, to the  
03:53PM 11 end of February, correct?

03:53PM 12 A. My professional opinion then and now is the same, that  
03:53PM 13 there is -- there was not an effective law enforcement  
03:53PM 14 response to this.

03:53PM 15 Law enforcement generally doesn't have the tools to  
03:53PM 16 handle a problem like this. The FBI doesn't have the tools  
03:53PM 17 to handle a problem like this.

03:53PM 18 If -- if I were to turn over this whole matter to the  
03:53PM 19 FBI, I know from long experience they would not take any  
03:53PM 20 affirmative investigative steps. That's my -- that's my  
03:53PM 21 professional opinion.

03:53PM 22 Q. But you can also send it to local District Attorneys  
03:53PM 23 offices, local police, town and village, cities, depending on  
03:53PM 24 where that individual resides, correct?

03:53PM 25 A. If I had -- if -- if we had gotten a direct threat that I

1 felt was even close to what a prosecutor would consider  
2 bringing charges for, I would have had that conversation.

3 But I doubt that I would have recommended charging the person  
4 for the reason I mentioned earlier, that -- that  
5 incarceration in these kinds of cases is very often a bad way  
6 to mitigate the threat.

7 Q. If you report it to local police or the U.S. Attorney's  
8 Office, or the FBI, it's not then your decision whether to  
9 prosecute or not, correct? It's not your recommendation as  
10 to whether they follow through. You report it, they  
11 investigate it, they then decide whether they want to  
12 prosecute it, correct?

13 MR. BOYD: Objection, Your Honor. It's asked and  
14 answered.

15 THE COURT: Overruled.

16 THE WITNESS: Could you ask the question again? I'm  
17 sorry I lost track of it.

18 MR. COVERT: Could you --

19 (The above-requested question was then read by the  
20 reporter.)

21 THE WITNESS: It's the prosecuting attorney's  
22 decision to prosecute. But I can certainly make a  
23 recommendation on whether to prosecute. And in this case,  
24 even if we had a threat that met my understanding of a  
25 criminal violation. I would not have recommended, probably,

03:55PM 1 that the person be prosecuted, because I -- I do not think  
03:55PM 2 that would have reduced the overall threat picture to this  
03:56PM 3 campus.

03:56PM 4 BY MR. COVERT:

03:56PM 5 Q. But you if you felt that any of these cases in 2022 were  
03:56PM 6 worthy of being referred to local law enforcement or the  
03:56PM 7 federal law enforcement agencies, it would not ultimately be  
03:56PM 8 your decision, and your recommendation would really just be a  
03:56PM 9 recommendation, it would be the decision of the law  
03:56PM 10 enforcement or the prosecution as to whether to proceed,  
03:56PM 11 correct?

03:56PM 12 A. Certainly, it would be -- it would be -- if it was not in  
03:56PM 13 our jurisdiction, and the University Police is a fully  
03:56PM 14 authorized New York State Police Department, we can have that  
03:56PM 15 conversation with prosecutors as normal course of business.

03:56PM 16 If it were in another jurisdiction, it would be for them  
03:56PM 17 to --

03:56PM 18 Q. It would be for them to decide?

03:56PM 19 A. It would.

03:56PM 20 MR. COVERT: And I'm going to move Exhibit 73 into  
03:56PM 21 evidence before we move on.

03:56PM 22 MR. BOYD: Objection.

03:56PM 23 MS. PANTZER: Your Honor, we'd just that exhibit  
03:56PM 24 wasn't entered into evidence. But --

03:57PM 25 MR. COVERT: That's why I'm moving it now.

03:57PM 1 THE COURT: He's moving it now.

03:57PM 2 MR. BOYD: Yeah.

03:57PM 3 MS. PANTZER: I thought you said in evidence.

03:57PM 4 MR. COVERT: Who's taking this? Alyssa or --

03:57PM 5 MR. BOYD: Well, look, I had a question, I guess.

03:57PM 6 You know, this is being moved in. It's a statement by

03:57PM 7 Professor Kershner. I don't know if he's planning to testify.

03:57PM 8 But if he's not, I would imagine this is hearsay.

03:57PM 9 MR. COVERT: Your Honor, we've been liberally -- this

03:57PM 10 is an informal hearing. We've been liberally allowing

03:57PM 11 everything in.

03:57PM 12 THE COURT: First of all, whether he comes in to

03:57PM 13 testify or not has no effect on whether it's hearsay.

03:57PM 14 Second of all, I don't think it's hearsay, because

03:57PM 15 it's not being offered for the truth of the matter asserted.

03:57PM 16 And third of all, this is a more liberal evidentiary

03:57PM 17 hearing than trial, and so for each of those reasons, your

03:57PM 18 objection is overruled. It's admitted.

03:57PM 19 MR. COVERT: Thank you.

03:57PM 20 **(Plaintiff's Exhibit 73 was received in evidence.)**

03:57PM 21 THE COURT: And I agree with Mr. Covert that one of

03:57PM 22 you should be objecting and, you know, one person per witness.

03:57PM 23 I don't care if you guys switch from witness to witness, but

03:58PM 24 one person should be doing the objecting and the speaking with

03:58PM 25 respect to the witness, and I'll hold the plaintiff's side to



03:58PM 1 that, as well.

03:58PM 2 MR. BOYD: Yeah, Your Honor. And I apologize. Going  
03:58PM 3 forward, I'll let Ms. Pantzer, since it's her witness, she'll  
03:58PM 4 be handling it. It's sometimes hard to help myself, and I  
03:58PM 5 apologize.

03:58PM 6 THE COURT: No, I get it, I get it, I get it.

03:58PM 7 And I know, as I said earlier, sometimes I have to  
03:58PM 8 make myself shut up, and it's hard to do. So no apology  
03:58PM 9 necessary. Go ahead.

03:58PM 10 MR. COVERT: Thank you. 73 in evidence, correct?

03:58PM 11 BY MR. COVERT:

03:58PM 12 Q. And before we move on, and I don't want -- I don't want  
03:58PM 13 to make this come off as being snarky, but you testified for  
03:58PM 14 a long time earlier on how you want there to be uncovering of  
03:59PM 15 individuals who are going to commit violence in the future,  
03:59PM 16 and you ask the public come forward, and if they see  
03:59PM 17 something, say something. Something along those lines,  
03:59PM 18 correct?

03:59PM 19 A. Yes.

03:59PM 20 Q. Yet you have all these threats in February of 2022, and  
03:59PM 21 if you thought any of those rose to the level of even being  
03:59PM 22 at the level of the lowest where you've asked the public to  
03:59PM 23 come forward, don't you think you should have reported it if  
03:59PM 24 you thought it was serious to law enforcement?

03:59PM 25 A. It was reported to law enforcement. I'm not trying to be

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1 snarky with you, either.

2 Q. But it wasn't -- you didn't send it out to local law

3 enforcement agencies or the U.S. Attorney's Office or the

4 FBI?

5 A. Right, but we are the jurisdiction.

6 Q. But you're worried about people that are off campus --

7 A. Sure.

8 Q. -- for the jurisdiction on campus. You're getting

9 threats from people that are off campus?

10 A. Right.

11 Q. And you don't even think that they're serious enough to

12 be on the lowest level of a threat, so you're not even

13 sending it out to law enforcement, but you're kicking

14 Dr. Kershnar off the campus.

15 A. For most of these threats, threatening communications,

16 concerning communications, they're on social media with a

17 screen name that would have to be resolved to an individual

18 somewhere in the United States or somewhere in the world,

19 perhaps. I don't know where to send that information.

20 Q. To the FBI. Don't -- if it's see something, say

21 something, and -- and -- and you thought that this rose even

22 to the lowest level where you would expect me or someone else

23 to report it to the FBI or law enforcement, then clearly you

24 didn't think enough of any of these threats to report to any

25 outside agency for them to follow up, whether they can or

04:00PM 1 not.

04:00PM 2 A. I was extremely concerned. I documented those concerns.

04:00PM 3 My --

04:00PM 4 Q. But your internal document --

04:01PM 5 MS. PANTZER: Objection. I would ask Mr. Covert to  
04:01PM 6 allow the witness to finish his answer.

04:01PM 7 THE COURT: Yeah, sustained. He was in the middle of  
04:01PM 8 his answer.

04:01PM 9 THE WITNESS: I was very concerned about those  
04:01PM 10 communications. I documented those concerns. I documented at  
04:01PM 11 length my overall concern. Based on my training and  
04:01PM 12 experience, I was very confident that sending it to the FBI  
04:01PM 13 would be ineffective.

04:01PM 14 There's -- the FBI was aware of it, of this issue.  
04:01PM 15 The local FBI agent was aware of it. There was no actionable  
04:01PM 16 steps, no actionable leads that could be pursued at that time,  
04:01PM 17 at any time, other than going to the effort of identifying the  
04:01PM 18 individuals, the hundreds of individuals that were authoring  
04:02PM 19 concerning communications.

04:02PM 20 That effort, in my view, even if we were able to  
04:02PM 21 identify those people and have conversations with with them,  
04:02PM 22 that is a subset of the people that I'm worried about for  
04:02PM 23 Fredonia. And -- and sending law enforcement officers out  
04:02PM 24 would be, in my view, like throwing gasoline on a fire,  
04:02PM 25 because now we would have a narrative that would be generated

1 where the -- the cops are chasing me because I'm angry with a  
2 pedophile. That would be the narrative. That's what I was  
3 concerned.

4 BY MR. COVERT:

5 Q. You offer a lot of opinions today about public  
6 perception. Do you have any background in public relations?

7 A. No.

8 Q. Do you have any degrees in public relations?

9 A. No.

10 Q. Have you ever been accepted as an expert in public  
11 relations?

12 A. No.

13 Q. Yet, a lot of what you testify to today, if you'll agree  
14 with me, is your impression of the perception of the public  
15 to the situation at Fredonia, correct?

16 A. As reflected in their comments, yes, I was concerned  
17 about the comments.

18 Q. You're concerned --

19 A. Um-hum.

20 Q. -- and perception of strangers to -- from outside the  
21 campus community to what's occurring on the campus community,  
22 yet you have no background in public relations, correct?

23 A. I do not have a background in public relations.

24 Q. You're concerned what the perception is going to be if  
25 Fredonia allows Dr. Kershner back onto campus, correct?

04:03PM 1 A. No. No. I was worried about the -- the threat  
04:03PM 2 environment that that created for the campus.

04:03PM 3 Q. Well, but you talk about the threat environment in the  
04:03PM 4 sense that his return to campus would increase, in your  
04:03PM 5 opinion, media attention, social media attention, correct?

04:03PM 6 A. Yes. And --

04:04PM 7 Q. And do you have any idea how long that attention would  
04:04PM 8 increase? Have you consulted any experts in soc -- in public  
04:04PM 9 relations, social media, to determine whether if he returned  
04:04PM 10 to campus that attention would increase in a day, in a half a  
04:04PM 11 day, in a news cycle, in two news cycles?

04:04PM 12 Did you ever consult anyone from the outside to determine  
04:04PM 13 how long would the attention last before it inevitably  
04:04PM 14 dissipated, like America's attention does to everything? Did  
04:04PM 15 you talk to anyone about that?

04:04PM 16 A. No. I had conversations with our media director who's  
04:04PM 17 got professional experience up here in Buffalo at one of the  
04:04PM 18 TV stations, the news director. We had conversations about  
04:04PM 19 it. I -- I -- he and I were of the same view that there was  
04:04PM 20 a lot --

04:04PM 21 Q. I'm sorry, I'm not gonna -- I'm gonna object to your  
04:05PM 22 talking about hearsay unless you want to identify this  
04:05PM 23 individual, or had any communication with this -- any written  
04:05PM 24 communications.

04:05PM 25 A. Sure. I apologize.

04:05PM 1 MS. PANTZER: Your Honor, he's eliciting the response  
04:05PM 2 to his own question about whether or not he got any PR advice.  
04:05PM 3 I mean --  
04:05PM 4 THE COURT: Yeah, I think that's true. You asked  
04:05PM 5 that question, and he's giving you his answer. You can follow  
04:05PM 6 up by asking --  
04:05PM 7 MR. COVERT: Yep.  
04:05PM 8 THE COURT: -- who he talked to and those kinds of  
04:05PM 9 things.  
04:05PM 10 MR. COVERT: Sure.  
04:05PM 11 THE COURT: But he can continue his answer.  
04:05PM 12 MS. PANTZER: Thank you, Your Honor.  
04:05PM 13 THE WITNESS: I recall conversations through this, I  
04:05PM 14 don't remember when, but it was early on, with Jeff Woodard,  
04:05PM 15 who is the SUNY Fredonia media director. He worked at, I  
04:05PM 16 believe, WGRZ as the news director. We had several  
04:05PM 17 conversations with about this.  
04:05PM 18 Mr. Woodard is a media expert, or as close as I could  
04:05PM 19 come to one. We did talk about this.  
04:06PM 20 My takeaway from those conversations was it was  
04:06PM 21 obvious to both of us that these are concerning messages that  
04:06PM 22 we're seeing in the public domain about this professor and our  
04:06PM 23 campus. And a plain reading of many of those messages is that  
04:06PM 24 it's reasonable, certainly based on the training and  
04:06PM 25 experience I've gone through, to believe that there -- they

04:06PM 1 may be messages from people who are willing themselves to  
04:06PM 2 commit a violent act, or they may encourage somebody who  
04:06PM 3 hasn't gotten on social media to do a violent act.

04:06PM 4 I believe it's clear that this is a very concerning  
04:06PM 5 episode from a -- from a physical safety standpoint for the  
04:06PM 6 campus.

04:06PM 7 BY MR. COVERT:

04:06PM 8 Q. Now, at the end of February, you've indicated that the  
04:07PM 9 media, social media, all of the attention has waned, the  
04:07PM 10 threats have waned, correct?

04:07PM 11 A. Yes, sir.

04:07PM 12 Q. And you decided nevertheless it was your recommendation  
04:07PM 13 to the university to not allow Dr. Kershinar back on campus,  
04:07PM 14 correct?

04:07PM 15 A. Yes.

04:07PM 16 Q. And did you consult with any public relations experts at  
04:07PM 17 that point to determine whether letting him back on campus  
04:07PM 18 would inevitably cause increased media and social media  
04:07PM 19 attention?

04:07PM 20 A. Other than the conversations I just mentioned, no.

04:07PM 21 Q. You didn't -- you had no idea at that point how long, if  
04:07PM 22 there was an increase in attention, how long that would last,  
04:07PM 23 correct?

04:07PM 24 A. I don't know.

04:07PM 25 Q. So everything you testified to earlier is very

04:07PM 1 speculative in relation to believing that the attention would  
04:07PM 2 be greater than it was for the first time in this controversy  
04:07PM 3 on February 2nd, correct?

04:07PM 4 A. Yeah. I don't know what the intensity or the duration of  
04:08PM 5 that would be.

04:08PM 6 Q. Yeah. It's totally speculative to believe it would less  
04:08PM 7 or more attention than it was in early February, correct?

04:08PM 8 A. My -- my judgment was that it was going to be more  
04:08PM 9 because there was an narrative out there that Fredonia should  
04:08PM 10 have known about this guy.

04:08PM 11 You know, pardon me for this informal language.

04:08PM 12 Fredonia should have known about Professor Kershner.  
04:08PM 13 That was early February. If he were to come back in mid  
04:08PM 14 March, or tomorrow, my belief, my professional opinion, not  
04:08PM 15 as a media expert but just as a law enforcement professional,  
04:08PM 16 is that the social media reaction would be higher intensity,  
04:08PM 17 more negative, more toward violent ideation, because the  
04:08PM 18 narrative would be that Fredonia has known about this all  
04:08PM 19 along and they still brought him back. That's my concern.

04:09PM 20 Q. But that's speculative on your part?

04:09PM 21 MS. PANTZER: Objection, Your Honor. Asked and  
04:09PM 22 answered.

04:09PM 23 THE COURT: Sustained.

04:09PM 24 MS. PANTZER: Thank you.  
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BY MR. COVERT:

Q. So, your recommendation to not bring him back, was that in any way questioned by Vice-President Metzger or the president at the time?

A. No.

Q. There was no pushback whatsoever?

A. No. And my takeaway from that -- well, I don't want to put words in their mouth. No, I got no push -- they accepted my recommendations.

Q. And at some point, you started preparing the March 17th assessment, correct?

A. Yes.

Q. And that assessment, when did you begin to draft that?

A. I don't recall.

Q. Did you utilize any resources or individuals to assist you in coming up with the conclusions of that threat assessment?

A. No.

Q. By March 17th, there was literally no attention to this matter anymore, correct, on social media? Media? There were no threats anymore. The situation had actually subsided, correct?

A. It wasn't back to zero by any means, no, it was -- it was a fraction of what it was, but there was still concerning traffic that I was seeing online.

04:10PM 1 MR. COVERT: Megan, if you can put 33 up, please?

04:10PM 2 Defendant's 33, I believe.

04:10PM 3 THE COURT: Defendant's 33?

04:10PM 4 MR. COVERT: Yes. Oh, no, I'm sorry. Not Defense

04:11PM 5 33. Mr. Isaacson's affidavit, his signature.

04:11PM 6 MS. PANTZER: It's Defendant's 1.

04:11PM 7 MR. COVERT: Defendant's 1. Thank you.

04:11PM 8 THE COURT: That's in evidence, right?

04:11PM 9 MS. PANTZER: Yes, Your Honor.

04:11PM 10 MR. COVERT: It is in evidence, Your Honor.

04:11PM 11 Megan, if you can go to paragraph 22, please.

04:12PM 12 BY MR. COVERT:

04:12PM 13 Q. Now, in paragraph 22, if you don't mind reading that to  
04:12PM 14 yourself.

04:12PM 15 You would acknowledge that after the weeks of early  
04:12PM 16 February, there was a marked improvement that occurred in the  
04:12PM 17 intensity of the public attendance in the Kershnar matter,  
04:12PM 18 correct?

04:12PM 19 A. Yes.

04:12PM 20 Q. And you noted that the quantity and quality of social  
04:12PM 21 media posts had waned, correct?

04:12PM 22 A. Correct.

04:12PM 23 Q. And you speculated that this is the result of

04:12PM 24 Dr. Kershnar's removal from campus and discontinuation of his  
04:12PM 25 contact with the students, correct?

04:12PM 1 A. Yes.

04:12PM 2 Q. And again, that's speculation. You don't know whether  
04:12PM 3 the public interest would have waned anyway, even if he  
04:12PM 4 hadn't been removed, correct?

04:12PM 5 MS. PANTZER: Objection, Your Honor. I would just  
04:12PM 6 object to the use of the term "speculation." Whether or not  
04:13PM 7 it's speculative is for the Court to decide as the trier of  
04:13PM 8 fact, not for Chief Isaacson to testify to.

04:13PM 9 THE COURT: Well, I think he can testify to the basis  
04:13PM 10 for his statements, so overruled.

04:13PM 11 THE WITNESS: This was my professional opinion. I  
04:13PM 12 think that accurately characterizes it.

04:13PM 13 MR. COVERT: Paragraph 35, please.

04:13PM 14 BY MR. COVERT:

04:13PM 15 Q. And if you can review paragraph 35.

04:13PM 16 You indicate that your recommendation of February 2nd  
04:13PM 17 stands. And when viewed strictly from a campus safety  
04:13PM 18 perspective, a return of Dr. Kershner to our campus would  
04:13PM 19 pose an unacceptable risk of violence, correct?

04:13PM 20 A. Yes.

04:13PM 21 Q. That was your professional opinion?

04:13PM 22 A. Yes.

04:13PM 23 Q. Wouldn't you agree that for purposes of courthouse  
04:14PM 24 safety, the most safe situation would be that no spectators  
04:14PM 25 would be allowed in the courthouse, correct?

04:14PM 1 A. I see where we're going. Yes. Sure.

04:14PM 2 Q. And if we want to keep the president safe, we keep him in  
04:14PM 3 the bunker at the White House, correct?

04:14PM 4 A. Correct.

04:14PM 5 Q. And there have recently been shootings at, unfortunately,  
04:14PM 6 at concerts, outdoor concerts. So if we want to protect  
04:14PM 7 patrons of concerts, we have empty stadiums and show it all  
04:14PM 8 on TV, correct?

04:14PM 9 A. That would minimize -- that would eliminate a threat.

04:14PM 10 Q. Did anybody at the university ever discuss with you the  
04:14PM 11 First Amendment rights of Dr. Kershner and balancing those  
04:14PM 12 with the campus safety perspective?

04:14PM 13 A. I had conversations with counsel on those points, but I  
04:14PM 14 think that's --

04:14PM 15 MS. PANTZER: Your Honor, that's privileged  
04:14PM 16 information.

04:14PM 17 THE WITNESS: Yeah.

04:14PM 18 THE COURT: He hasn't been asked for it yet.

04:14PM 19 MR. COVERT: Yeah, I did not.

04:14PM 20 BY MR. COVERT:

04:14PM 21 Q. Did your conversations with your boss, Mr. Metzger, the  
04:15PM 22 vice-president, did he ever discuss with you balancing campus  
04:15PM 23 safety with Dr. Kershner's First Amendment right to express  
04:15PM 24 himself?

04:15PM 25 A. I had conversations with -- with -- I, well, now I'm not

1 sure of the date. At some point I became aware of this  
2 litigation, and I clearly knew then there was a First  
3 Amendment question before the Court.

4 I did not have substantive conversations with -- with  
5 either my vice-president or President Kolison about final  
6 agreement issues.

7 Q. Okay. Now at some point, you apparently came to the  
8 conclusion that it would be in SUNY Fredonia's best interest  
9 to have a judge force Fredonia to allow Dr. Kershner back on  
10 campus as opposed to take any other mitigating measures to  
11 allowing him to return; is that correct?

12 A. That is correct, but I can explain why I feel that way if  
13 you'd like.

14 MR. COVERT: Well, let's go to paragraph 33. I'm  
15 sorry. No, Meg, keep scrolling. I apologize, it's page 33.  
16 My fault. Keep scrolling. You're on the right page.

17 MR. CORN-REVERE: This is from Exhibit 33.

18 MR. COVERT: No, this is from, Megan, if you can  
19 scroll down just a little bit to as a thought experiment.

20 Can you make that at the top of the page?

21 Don't worry, you're doing fine.

22 BY MR. COVERT:

23 Q. And this is from your report, correct, your threat  
24 assessment?

25 A. Yes, sir.

Q. And if I can read it.

As a thought experiment, it is worth considering a scenario where Kershnar were to return to campus perhaps after litigation where his return became inevitable. It is reasonable to conclude that the public would immediately become aware of his return, and the narrative would very quickly develop that the campus was somehow complicit in his return. We saw this in early February. A major theme of the public narrative was that SUNY Fredonia was aware of and supportive of Kershnar's views on child sexual exploitation, notwithstanding President Kolison's message to the contrary. Kershnar's hypothetical future to return to campus and his normal teaching duties would drive a narrative that our campus, now fully aware of Dr. Kershnar's statements normalizing child sex exploitation, has nevertheless allowed his return.

Absent a purposeful and effective messaging campaign to the contrary, the fact that his return may have been mandated by a court after litigation will have little effect on reducing the anger and grievances developed by the public towards our campus.

Accordingly, our campus should be working now to develop contingency plans which include a messaging campaign that explains to the public that Kershnar's return is not of our making, that we argued in court for his permanent removal

1 from our campus, and that his return is a result of losing  
2 hard-fault litigation. Correct, sir?

3 A. Yes.

4 Q. There is no discussion of mitigating or steps that are  
5 short of losing litigation to return Dr. Kershnar to the  
6 campus anywhere in this threat assessment, are there?

7 A. My view all along has been that there is not a halfway  
8 point between his full return and where we are now that  
9 doesn't significantly increase the risk to the campus.  
10 That's my opinion.

11 Q. But you -- your position was you wanted SUNY Fredonia to  
12 force -- to have a judge force them to have Dr. Kershnar  
13 returned for public relations purposes, correct?

14 A. For threat mitigation purposes, not for --

15 Q. You keep referring to the public here and the public  
16 perception, correct?

17 A. That's exactly right. I'm concerned about a member of  
18 the public coming onto campus and committing an act of  
19 targeted violence because of this controversy. I've  
20 testified about that point.

21 My point, and as part of my memo, is that if -- if the  
22 Court were to rule that he is to be returned to campus,  
23 campus would obviously obey that order, he would come back.

24 From my standpoint, I think you all understand that that  
25 would significantly increase the risk of physical violence on

campus, a targeted attack.

The -- the only way at that point, in my view, to mitigate that would be to try to explain to the public that it is not SUNY Fredonia who is welcoming the professor back fully aware of his views and we're bringing him back because we want to bring him back. That would -- that would connect Fredonia and Dr. Kershnar's views in the minds of the public. We saw that reflected in the social media commentary on all these messages that we've been talking about.

I don't think it would do a lot of good, frankly, but it would be something to move the needle a little bit toward safety if there was a messaging campaign that explained to the public that we don't want him back on campus, we don't agree with his views, but we were ordered to bring him back anyway.

Q. So your position was you wanted Fredonia to continue to condemn Dr. Kershnar's First Amendment protected views publicly?

A. I wanted -- I think it -- it would be appropriate and desirable for the campus to try to distance itself as an entity from his views.

Q. When you issued this March 17th threat assessment, did -- who did it go to?

A. You'll have to page up.

Q. I think if we do page up, I do believe it's the human



1 resources and the counsel's office?

2 A. Yes, that sounds right.

3 Q. Do you know whether this was shared -- this assessment

4 was shared with anyone else in the SUNY administration, other

5 than counsel's office? I'm not asking you to violate any

6 privilege.

7 A. My understanding, and I don't know how I have this

8 understanding, is that it was read by the president and --

9 and my vice-president.

10 Q. And did the president or vice-president ever contact you

11 and communicate their disagreement with your recommendation

12 that only through litigation could Dr. Kershnar be returned

13 to campus?

14 A. I'll go with my earlier answer, that they concurred with

15 my recommendations, and I -- we did not have a substantive

16 discussion.

17 MR. COVERT: Megan, if you can go to the end of

18 page 37. If you can scroll down and make that the top of the

19 page.

20 BY MR. COVERT:

21 Q. So as opposed to a thought experiment earlier that

22 preceded that paragraph, here you concretely indicate your

23 recommendation that Fredonia allow litigation to cause his

24 return, correct?

25 A. Yes.

04:23PM 1 Q. Reading -- I'll be reading from this document:

04:24PM 2 If Kershnar's return becomes inevitable, it should be  
04:24PM 3 preceded by an intense messaging campaign by campus and SUNY  
04:24PM 4 that Kershnar's return is over our strong, but unfortunately  
04:24PM 5 unsuccessful, legal efforts to keep him away from our campus  
04:24PM 6 and our students.

04:24PM 7 The intent of this messaging campaign should  
04:24PM 8 unequivocally inform the public that SUNY Fredonia in no way  
04:24PM 9 supports Kershnar views, but that we have been ordered by a  
04:24PM 10 judge over our strong objections to let him return, correct?

04:24PM 11 A. Yes.

04:24PM 12 Q. So, again, you and, apparently by acquiescing to this,  
04:24PM 13 the president and the vice-president are willing to distance  
04:24PM 14 yourself from Dr. Kershnar's First Amendment protected  
04:24PM 15 speech, and condemn that speech in order to enhance SUNY  
04:24PM 16 Fredonia's public relations position?

04:24PM 17 A. It would be an effort, and I don't think it would be  
04:25PM 18 particularly effective, but it would be an effort to distance  
04:25PM 19 the campus from Dr. Kershnar's view, and potentially reduce  
04:25PM 20 the grievance that some would feel toward the campus, and  
04:25PM 21 that some might act on to carry out a violent attack.

04:25PM 22 I'm trying to reduce, with this effort if it were to come  
04:25PM 23 to pass, the grievances for those who might be on that  
04:25PM 24 pathway to violence. That's my sole intent here.

04:25PM 25 Q. Now, as of March 17, 2022, were there -- was there any

1 known imminent threat of danger to Dr. Kershnar or the SUNY  
2 campus?

3 A. Not that I am aware of, where we identified an individual  
4 that he is on that pathway of violence and heading our way,  
5 we just didn't have visibility on people outside the campus.

6 Q. So there was no imminent threat that you were aware of to  
7 the campus?

8 MS. PANTZER: Objection, asked and answered.

9 THE COURT: Sustained.

10 BY MR. COVERT:

11 Q. Had any outside law enforcement agencies, prior to  
12 March 17th, 2022, informed you that there was any imminent  
13 threat to Dr. Kershnar or the campus?

14 A. No.

15 Q. Between February 2nd and March 17th, 2022, had you  
16 reported any conduct related to threats to any outside law  
17 enforcement agency?

18 A. I don't recall the timing other than I had those  
19 conversations with -- with my FBI colleague.

20 I spoke to the undersheriff of Chautauqua County -- or,  
21 pardon me, the captain of patrol for Chautauqua County, Rick  
22 Telford. And I spoke to a captain of the State Police, Eric  
23 Baylon. I explained to them both what was going on, and  
24 that's when I asked them to step up patrols around  
25 Dr. Kershnar's home. Those are --

04:27PM 1 Q. When did you ask them to step up patrols?

04:27PM 2 A. It was in the days after February 2nd.

04:27PM 3 Q. Okay. Not closer to March 17th?

04:27PM 4 A. Right. In fact, the email we talked about earlier on

04:27PM 5 February 7, I believe, that memorializes my earlier

04:27PM 6 conversation with Professor Kershnar to watch his

04:27PM 7 surroundings, and then I also indicated to him that I had

04:27PM 8 notified the other agencies of the issue.

04:28PM 9 MR. COVERT: Megan, if you can go back to up to the

04:28PM 10 passage up at page 33.

04:28PM 11 BY MR. COVERT:

04:28PM 12 Q. There's a reference about four lines from the bottom of

04:28PM 13 the paragraph that I read, the thought experiment paragraph,

04:28PM 14 where you indicate that the campus should be working now to

04:28PM 15 develop contingency plans which include a messaging campaign.

04:28PM 16 What efforts were made to develop those contingency

04:28PM 17 plans?

04:28PM 18 A. Frankly, not many. I -- I don't recall having

04:28PM 19 conversations, at least that I was aware of, I was not aware

04:28PM 20 of any conversations, because the status quo appeared to

04:28PM 21 be -- it appeared to -- that it was going to stay the status

04:29PM 22 quo for an indeterminate amount of time.

04:29PM 23 MR. COVERT: Megan, if you can return to page 37, 38,

04:29PM 24 top of page 37, actually. 38, actually. Okay. Right there.

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BY MR. COVERT:

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Q. The last paragraph on that page states: If he were to

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3

return, strong safeguards would need to be put in place to

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4

assure the personal safety of Kershinar and those near to him.

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5

Kershinar should be ordered to be fully cooperative with

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6

the University Police in conveying any information he

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7

receives which could impact the safety of the campus.

04:30PM

8

Those are your words, correct?

04:30PM

9

A. Yes.

04:30PM

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Q. So you don't deny in that passage that safeguards could

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11

be put in place to protect Dr. Kershinar or the university,

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12

you just indicate that they have to be strong, correct?

04:30PM

13

A. Yes. And to fill out that thought, my opinion then and

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14

now is that those safeguards would not be effective.

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Q. Well, then, wouldn't your recommendation be that he can't

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be allowed back under any circumstances, and he needs to be

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fired or removed?

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A. That was my recommendation, that he not --

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Q. That's not your recommendation here in this threat

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assessment. You indicate in the threat assessment that if he

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were to return, that there should be strong safeguards put in

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place, not that there are no such safeguards that are

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23

possible.

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24

A. This contemplates that a court orders his return, or

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25

there's some other legal process that would bring him back,

not that we would bring him back willingly because of the --  
of the threat concern.

Q. Okay. So then after this report is issued, there's  
another threat assessment on August 14 of 2022, correct?

A. That sounds right, yes.

Q. You testified earlier for the defense that this was an  
ongoing reassessment process.

What were you reassessing if you weren't going to let him  
back on campus unless a judge forced the university to -- and  
then the university would have to have a strong publicity  
campaign, what were you reassessing.

A. In retrospect, maybe not the best use of the word  
"reassess."

The -- I was periodically monitoring the social media  
traffic. And that periodic review just reinforced my belief  
that there was not an interim measure, interim process that  
we could put in place outside of his absence from campus that  
would not inflame the threat picture.

Q. So you continued to monitor through -- let's pick a date,  
August 14th, because you issued a threat assessment on that  
date, you continued to monitor after March 17th through  
August 14th social media, correct?

A. Yes.

Q. And it's fair to say that the social media attention had  
largely dissipated, it had waned way back in February,

04:32PM 1 correct?

04:32PM 2 A. That's right.

04:32PM 3 Q. So you monitor it from March 17th through August 14th,

04:32PM 4 you find that it continues to not have any attention or

04:32PM 5 minimal attention, there -- were there any imminent threats

04:33PM 6 that came to your attention from that time between March 17th

04:33PM 7 and August 14th?

04:33PM 8 A. No.

04:33PM 9 Q. So there's no social media attention, there's no imminent

04:33PM 10 threats, you're reassessing on August 14th. What leads you

04:33PM 11 to believe that based upon no imminent threats and no social

04:33PM 12 media attention, you can't possibly bring him back onto

04:33PM 13 campus?

04:33PM 14 A. I'll reiterate earlier points.

04:33PM 15 The social media interest was not zero, but it was less

04:33PM 16 than it was at the peak in early February.

04:33PM 17 My professional opinion was, and is today, that if he

04:33PM 18 were to come back, and it were perceived by the public that

04:33PM 19 Fredonia is bringing him back voluntarily, that the threat

04:34PM 20 picture would be worse than it was on -- in early

04:34PM 21 February '22.

04:34PM 22 Q. And you testified that your views before March 17th on

04:34PM 23 that issue were speculative, and you would agree that your

04:34PM 24 view or your opinion in relation to the time period between

04:34PM 25 March 17th and August 14th, 2022, is similarly purely

04:34PM 1 speculative?

04:34PM 2 MS. PANTZER: Objection.

04:34PM 3 THE COURT: To the word speculative?

04:34PM 4 MS. PANTZER: Yes, Your Honor. And the fact that I  
04:34PM 5 don't believe that that was the testimony. I don't think he  
04:34PM 6 agreed that his threat assessments were, quote, speculative.

04:34PM 7 MR. COVERT: No, that's not what I asked him, and  
04:34PM 8 that's not what I'm representing he said before.

04:34PM 9 THE COURT: Okay. So I'm going to sustain the  
04:34PM 10 objection to the form of the question. You can -- you can ask  
04:34PM 11 again, please.

04:34PM 12 BY MR. COVERT:

04:34PM 13 Q. I'm not asking you whether your threat assessment of  
04:34PM 14 August 14th is speculative. Is your belief, though, that  
04:34PM 15 based upon what you had seen occur from March 17th through  
04:35PM 16 August 14th, which consists of minimal social media  
04:35PM 17 attention, and no imminent danger, is your opinion that  
04:35PM 18 bringing him back to campus would cause even greater media  
04:35PM 19 scrutiny than February of 2022, is that speculation?

04:35PM 20 A. It's my professional opinion, I don't know that there's  
04:35PM 21 no danger. My -- my testimony earlier is, was, that my  
04:35PM 22 concern about this matter is when we see the danger and  
04:35PM 23 recognize it for what it is, it will be too late.

04:35PM 24 Q. What factors that you saw, between March 17th and  
04:35PM 25 August 14th of 2022, would lead you to believe, what



1 specifically did you see that would lead you to believe that  
2 if you brought him back onto campus, that the situation would  
3 be even more dangerous than it was in February of 2022?

4 A. By March of 2022, I had come to the conclusion, based on  
5 my professional experience and training, that if he were to  
6 come back, the threat picture would be worse than it was in  
7 early February.

8 That conclusion hasn't changed from March of 2022 until  
9 this very moment. That's what I believe sitting here today.

10 Q. Well, I'm asking you from the time period of March 17th  
11 of 2022 and August 14th of 2022 -

12 A. Right.

13 Q. -- can you point to anything that happened during that  
14 time period that would lead -- that you could point to,  
15 that -- as support for your opinion on August 14th that  
16 bringing him back would be -- would create a situation that  
17 was even more dangerous than back in February of 2022?

18 Can you point to anything solid?

19 A. My conclusion, my opinion, that if he were to come back  
20 and it were perceived to be voluntary, that the public and  
21 potentially violent actors would attach blame to the campus,  
22 six weeks after or six months after the campus became aware  
23 of this controversy.

24 So my concern has been that if he were to come back and  
25 the public and potential bad actors in the public, the

04:37PM 1 violent actors in the public, were to conclude that Fredonia  
04:37PM 2 is welcoming him back in full awareness of his views, that  
04:37PM 3 grievances that would drive potential violence toward the  
04:37PM 4 campus would be inflamed.

04:37PM 5 THE COURT: Did anything happen between March and  
04:38PM 6 August to strengthen that opinion?

04:38PM 7 THE WITNESS: No, Judge.

04:38PM 8 MR. COVERT: Thank you, Your Honor.

04:38PM 9 BY MR. COVERT:

04:38PM 10 Q. Now, the next updated threat assessment was in October  
04:38PM 11 of -- October 31st of 2022, correct?

04:38PM 12 A. Yes, that sounds right.

04:38PM 13 Q. And in the meantime, SUNY Fredonia had engaged a company  
04:38PM 14 called A1C, which you testified to earlier, to conduct a  
04:38PM 15 social media scrub and to provide their own threat  
04:38PM 16 assessment, correct?

04:38PM 17 A. Yes.

04:38PM 18 Q. Now, you've testified very consistently that since at  
04:38PM 19 least before March 17th, through the engagement of AC1C  
04:38PM 20 (sic), that -- you were -- your opinion was Dr. Kershner was  
04:38PM 21 never gonna come back onto campus, correct, unless he was  
04:38PM 22 forced to by a judge?

04:39PM 23 A. My rec -- I knew my recommendation was not gonna change.

04:39PM 24 Q. And your recommendation had been abided by by the  
04:39PM 25 administration throughout?

04:39PM 1 A. Yes.

04:39PM 2 Q. Yet the -- you recommended that they spend money on an  
04:39PM 3 outside company to conduct a new threat assessment based upon  
04:39PM 4 social media at that point?

04:39PM 5 A. Yes.

04:39PM 6 Q. What was the purpose of that if you were never gonna  
04:39PM 7 change your -- if your recommendation was not gonna change?  
04:39PM 8 Did someone ask you at the university to do this?

04:39PM 9 A. No. No. It was an opportunity.

04:39PM 10 I mentioned earlier that one of the principals at that  
04:39PM 11 company is a former FBI colleague. And he explained to me  
04:39PM 12 what the capabilities they have were to do an internet scrub.  
04:39PM 13 That seemed to resonate well with this very matter, and I  
04:39PM 14 asked them to do that. That's -- I don't know if I'm  
04:40PM 15 answering your question.

04:40PM 16 Q. You are. And who did you contact at the university to  
04:40PM 17 get authorization do this? Who did you discuss that with?

04:40PM 18 A. I believe it was Mike Metzger, my vice-president at the  
04:40PM 19 time.

04:40PM 20 Q. Are -- now you did, in your affidavit, reference passages  
04:40PM 21 from the A1C report that were supportive of your earlier  
04:40PM 22 recommendation that Dr. Kershner be remain banned from the  
04:40PM 23 campus, correct?

04:40PM 24 A. Yes.

04:40PM 25 Q. You left out, though, various passages.

MR. COVERT: And, Meg, if you can go to Defendant's Exhibit 33.

BY MR. COVERT:

Q. You left out numerous passages though in your affidavit to the Court where the AC1C actually found that was no threat, immediate or imminent, to Dr. Kershner, the campus, staff, or students, correct?

A. I think the language here is important.

MS. PANTZER: Your Honor, I would just object so that Chief Isaacson be allowed to review the portion of the report that Mr. Covert's referencing right now.

THE COURT: If he needs to review it to answer the question, he can say that, but he has not indicated that.

So I think if he can answer the question without reviewing it, he can answer the question without reviewing it.

Read the question back, please, Ann.

(The above-requested question was then read by the reporter.)

THE WITNESS: Yes, there is language in the A1C report that I think you paraphrased.

I had a conversation with Richard Denholm, the former agent that was the principal, and -- after seeing the report. And I asked him, does any of your staff have training in threat assessments?

And the answer was, no, they're very good at doing

internet scrubs and collecting the data, but they have not had the kind of training to make a substantive judgment in the context of this manner.

So, I do --

MR. COVERT: Meg, if you can scroll down to the second paragraph?

So, you're essentially saying --

If you can just focus in a little bit.

BY MR. COVERT:

Q. So you're essentially saying that you personally engaged on behalf of Fredonia an agency to conduct a scrubbing and threat assessment that was not qualified to do so?

A. That mischaracterizes it. I -- I engaged them to do an internet scrub. They came back with the internet scrub data, and then commentary on that data.

When I had a conversation with Mr. Denholm, I asked him, are your employees, are your analysts trained in threat assessments to know how to judge the quality of these posts? And the answer was no.

MR. COVERT: First of all, I'd like to move the exhibit into evidence, because I've been very good at not moving it right away and forgetting to do so.

MS. PANTZER: We have no objection, Your Honor.

THE COURT: Okay. It's received without objection.

MR. COVERT: Thank you.

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And I asked what kind of training they have in threat

1 assessments, threat mitigation, and they didn't have any.

2 Q. So it's fair to say that they did not seemingly support

3 your prior views, and when you received the report you

4 decided to discount it. Except for the parts that were

5 supportive of your views, those you did send to the Court.

6 A. Yes. With -- with the understanding that the --

7 Q. A little disingenuous?

8 A. No. No.

9 MS. PANTZER: Your Honor, objection to the

10 argumentative nature of that last comment. But additionally,

11 I believe Chief Isaacson wasn't finished with his last answer.

12 THE COURT: Well, if you're going to object to the

13 question then --

14 MS. PANTZER: No, I objected to the last comment that

15 said a little disingenuous, which is not a question. I would

16 like Chief Isaacson to be able to finish his --

17 THE COURT: Oh, yeah, right. Yes, I'm sorry.

18 MS. PANTZER: Okay. I would just like Chief Isaacson

19 to be able to finish his response to the question prior to the

20 argumentative comments.

21 THE COURT: Yeah. He said yes, with the

22 understanding.

23 MS. PANTZER: Yes.

24 THE COURT: So why don't you finish that. Although I

25 did think a little disingenuous was meant as a question.

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MR. COVERT: Correct.

THE COURT: But that's okay. So the objection to that question is sustained so far as it interrupted the answer. You can now answer.

THE WITNESS: Right. I would -- I would like to make it clear to the Court that there's nothing disingenuous with my affidavit to the Court.

THE COURT: That's not the question. That's not the question.

THE WITNESS: But I want to explain that in my affidavit to the Court, it is -- it very clearly shows that I am summarizing the threat assessments that I provided to my -- my management. Each section of my affidavit has a header that says below is a summary of my February 2nd memorandum, whatever those four memoranda are dated.

So the affidavit to the Court was meant simply as a way to bring all those threat assessments that I made to SUNY Fredonia administrators, and package it in a way that was easily digestible to the Court.

I hope that makes that clear.

MR. COVERT: Meg, can you go back to Defendant's Exhibit 1, page 17, page 45.

BY MR. COVERT:

Q. And I'll let you read this if you'd like to. This is the updated -- October 31st updated threat assessment where it



04:48PM 1 starts at paragraph 44.

04:48PM 2 MR. COVERT: And, Meg, if you can keep scrolling  
04:48PM 3 down.

04:48PM 4 BY MR. COVERT:

04:48PM 5 Q. It ends at paragraph 49.

04:48PM 6 THE COURT: Do you want him to read that to himself?

04:49PM 7 MR. COVERT: Yes, please.

04:49PM 8 THE WITNESS: Thank you, Your Honor.

04:49PM 9 BY MR. COVERT:

04:49PM 10 Q. If it's easier, I can pull it out of my three-ring  
04:49PM 11 binder.

04:49PM 12 A. That will be okay.

04:49PM 13 Q. Do you want this?

04:49PM 14 A. Sure.

04:49PM 15 Q. Handing pages 17 through 20. Have you read it?

04:49PM 16 A. Yes, sir.

04:50PM 17 Q. Is it fair to state that the passages in paragraphs 44  
04:50PM 18 through 49 of Exhibit 1, Defendant's Exhibit 1, which is  
04:50PM 19 under the title October 31st, 2022 updated threat assessment,  
04:50PM 20 that those are all passages that reflect portions of the A1C  
04:50PM 21 report that you believe are supportive of your interpretation  
04:50PM 22 of the threat assessment?

04:50PM 23 A. Yes.

04:50PM 24 Q. And do not offer any of the passages that A1C included in  
04:50PM 25 their report in Exhibit 33 that are seemingly not supportive

of your threat assessment where they actually find that based upon their social media scrub that there is no existence of an imminent or immediate threat to Dr. Kershnar, Fredonia campus, staff or students?

A. Yes.

MR. COVERT: So, Megan, if you can go then to paragraph -- I'm sorry, Exhibit 33, and then down to the third paragraph. Or second paragraph.

BY MR. COVERT:

Q. So in the second paragraph where begin at, Exhibit 33 under the executive summary, it indicates that A1C performed key word searches designed to surface potential direct and indirect threats to the Fredonia campus, staff members, and students, specifically directed towards Dr. Kershnar, correct?

A. Yes.

Q. Going to the next paragraph, I believe the third sentence. I'm reading from the report:

The majority of the online discussion activity occurred during February 2022. While the comments should be seriously considered as part of the enterprise wide physical security and safety planning process at Fredonia and the SUNY system, the comments do not suggest the existence of an immediate or imminent threat to the Fredonia campus, staff, students, or Professor Kershnar, correct?

04:52PM 1 A. Correct.

04:52PM 2 Q. And the next paragraph indicates that some of the samples  
04:52PM 3 of what they captured is attached, and the paragraph after  
04:52PM 4 that indicates that considering the subject matter on which  
04:52PM 5 Professor Kershnar offered observations, as well as the  
04:52PM 6 direct and indirect comments posted online regarding SUNY  
04:52PM 7 Fredonia and Professor Kershnar, AlC recommends persistent  
04:53PM 8 evaluation of online activity be conducted over the near  
04:53PM 9 term, correct?

04:53PM 10 A. Yes.

04:53PM 11 Q. So their scrub does not even indicate that we need to  
04:53PM 12 have long-term social media monitoring in this case. Theirs  
04:53PM 13 strictly indicates that we just need to do this for the near  
04:53PM 14 term, correct?

04:53PM 15 A. That's what it says, correct.

04:53PM 16 Q. And you did not include that in your affidavit to the  
04:53PM 17 Court, correct?

04:53PM 18 A. No, my understanding was all of this material would be  
04:53PM 19 presented to the Court.

04:53PM 20 Q. This was not attached to your affidavit.

04:53PM 21 A. No.

04:53PM 22 MR. COVERT: Your Honor, this might be a good time to  
04:53PM 23 break, if that's okay.

04:53PM 24 THE COURT: You're not done?

04:53PM 25 MR. COVERT: No. Oh, no.

04:53PM 1 THE COURT: Okay. We will break for the day, and we  
04:53PM 2 will continue at 10:00 tomorrow morning.

04:53PM 3 MR. COVERT: 10:00, Your Honor?

04:53PM 4 THE COURT: And we'll go as normal lunch break  
04:53PM 5 tomorrow, and go the full day, and then --

04:53PM 6 MR. COVERT: I think we'll be done tomorrow. I think  
04:53PM 7 we may be going the full day, but I would anticipate another  
04:53PM 8 hour, hour and a half. Then they have another witness, I  
04:54PM 9 believe. I won't speak for them as to how long that is.

04:54PM 10 But then we have our experts. And unless they are  
04:54PM 11 gonna ask for more time on that front.

04:54PM 12 THE COURT: We'll see what we can -- go ahead.

04:54PM 13 MR. BOYD: Yeah, Your Honor, I was gonna ask if  
04:54PM 14 Mr. Covert expects about another hour, and then we have  
04:54PM 15 redirect, just for our second witness, would it make more  
04:54PM 16 sense -- do you want him before lunch or after lunch, just for  
04:54PM 17 scheduling purposes.

04:54PM 18 THE COURT: What's your thought?

04:54PM 19 MR. COVERT: I wouldn't mind breaking and coming back  
04:54PM 20 after lunch. It's really up to the Court.

04:54PM 21 MR. BOYD: So it might be an early lunch, but.

04:54PM 22 THE COURT: Yeah, maybe we'll do an early lunch at  
04:54PM 23 11:30 instead of noon. But yeah, let's go that route so your  
04:54PM 24 witness -- so we don't inconvenience him any more than we have  
04:54PM 25 to.

MR. BOYD: Okay. What time would you like our second witness here, Your Honor?

THE COURT: So let's say 12:30.

MR. BOYD: Thank you.

THE COURT: Okay? Anything else anybody wants to put on the record before we close for the day?

From defense?

MS. PANTZER: No, Your Honor.

THE COURT: From the plaintiff?

MR. COVERT: No, Your Honor.

THE COURT: Okay. See you folks tomorrow morning.

Thank you.

**(Defendants' Exhibit 33 was received in evidence.)**

(Proceeding concluded at 4:55 p.m.)

\* \* \* \* \*

**CERTIFICATE OF REPORTER**

In accordance with 28, U.S.C., 753(b), I certify that these original notes are a true and correct record of proceedings in the United States District Court for the Western District of New York on September 13, 2023.

s/ Ann M. Sawyer  
Ann M. Sawyer, FCRR, RPR, CRR  
Official Court Reporter  
U.S.D.C., W.D.N.Y.

**KERSHNAR v KOLISON et al - 23-cv-525**  
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